

United States<sup>8</sup>  
Circuit Court of Appeals  
For the Ninth Circuit.

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ALASKA PACKERS' ASSOCIATION, a Corpora-  
tion,

Plaintiff in Error,  
vs.

D. J. GOVER,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of the  
District of Alaska, Division No. 1.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

H. L. FAULKNER, Juneau, Alaska,  
Attorney for Plaintiff in Error.

A. H. ZIEGLER, Ketchikan, Alaska,  
Attorney for Defendant in Error. [0\*]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan, Alaska.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Amended Complaint.**

Comes now plaintiff and for cause of action  
against defendant alleges as follows:

I.

That plaintiff now is, and was at all times herein-  
after mentioned, a resident and inhabitant of the  
Territory of Alaska.

II.

That defendant now is, and was at all times here-  
inafter mentioned, engaged in the business of catch-  
ing and canning salmon at Loring, Alaska, by means  
of machinery and mechanical appliances; that in  
conjunction with the operation of said cannery,  
defendant, at all times hereinafter mentioned,

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

owned, controlled and operated a salmon hatchery, which was also carried on by means of a sawmill, machinery and mechanical appliances.

### III.

That on or about April 19, 1920, plaintiff was, and had been for a long time prior thereto, employed by defendant as a laborer in connection with the operation in the manner and by the means aforesaid of said salmon hatchery.

### IV.

That at Loring, Alaska, on said April 19th, 1920, the plaintiff was directed by the superintendent, or person directly in charge of said hatchery, to dismantle an old flume constructed of boards about twenty feet from the ground; that said flume was reached only by means of a stationary ladder running from the ground to said flume; that while plaintiff was actually engaged in said work, he placed his right hand on the top rung of said ladder, preparatory to descending same to the ground; that while [1] so descending, the said rung broke loose and gave away, precipitating plaintiff violently to the ground a distance of approximately twenty feet; that the plaintiff landed on the ground beneath, striking with great force on his left hip, side and shoulders; that plaintiff was rendered almost unconscious from the shock of said fall; that he thereby sustained severe injuries to his spine, hips and legs, and suffered severe and permanent internal injuries; that the place above mentioned where plaintiff was injured was and is a part of the works belonging to defend-

ant and with which the defendant carried on its business of operating said hatchery and catching and canning salmon.

## V.

That as a result of said injuries plaintiff has suffered great pain of body and distress of mind; that the said injuries are permanent in character rendering plaintiff practically helpless; that ever since said accident he has suffered and will continue to suffer great pain; that plaintiff is wholly unable to work and will continue through life to be wholly unable to work or to support himself.

## VI.

That the place where and ladder by which plaintiff was injured were entirely under the management, control and supervision of the defendant; that the rung that broke loose and gave away, as above described, and the timbers to which said rung was fastened by nails, were very old, rotten and wholly unsuitable and unfit for the purpose for which they were used; that the defendant knew, or ought to have known, the condition of said rung and timbers; that the plaintiff did not know, and had no means of knowing, the condition of said rung and timbers; that the plaintiff was in the discharge of his duties at said time and was without fault on his part; that it was the duty of defendant to exercise ordinary care to keep said ladder in reasonable repair; that defendant was negligent in failing so to do; that plaintiff's injuries were caused by gross carelessness [2] and negligence of defendant in failing to exercise ordinary care



in keeping said rung, timbers and ladder in reasonable repair.

VII.

That plaintiff was at the time of the accident above mentioned in good health, was earning and capable of earning the sum of approximately \$150 per month; that as aforesaid the plaintiff was, and now is, dependent upon his own efforts for support.

WHEREFORE plaintiff prays for judgment against the defendant in the sum of \$20,000, together with his costs and disbursements herein expended.

ZIEGLER & GORE,  
Attorneys for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

D. J. Gover, being first duly sworn, on oath deposes and says: I am the plaintiff in the above-entitled action, have read the foregoing amended complaint, know the contents thereof and the same is true as I verily believe.

D. J. GOVER,  
Plaintiff.

Subscribed and sworn to before me this 21st day of Oct., 1920.

[Notary Seal]

A. H. ZIEGLER,  
Notary Public for Alaska.

Filed in the District Court, District of Alaska, First Division. Oct. 23, 1920. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy.



Copy received and service admitted this — day of Oct., 1920.

H. L. FAULKNER,  
Attorney for Defendant. [3]

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In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Amended Answer to Complaint as Amended.**

Comes now the defendant, leave of Court being first had, and files this its amended answer to the plaintiff's amended complaint, and admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in paragraph one.

II.

Referring to the allegations contained in paragraph two, defendant admits that during a portion of each year it is engaged in the business of catching and canning salmon at Loring, Alaska, by means of machinery and mechanical appliances; admits that it owns, controls and operates a salmon hatch-

ery; denies that it was engaged in the business of catching and canning salmon on April 19, 1920, and denies each and every other allegation contained in said paragraph.

### III.

Referring to the allegations contained in paragraph three, defendant admits that on April 19, 1920, plaintiff was in its employ, and admits that plaintiff had been in the employ of defendant since July, 1919, as a laborer, and denies each and every other allegation contained therein.

### IV.

Referring to the allegations contained in paragraph four, defendant admits that on April 19, 1920, the plaintiff was directed to dismantle an old flume constructed on boards, the top of which was twenty-five feet from the ground; admits that the top of said flume was reached by means of a stationary ladder [4] running from the ground to the top of said flume, and alleges that said ladder was a portion of said flume and was built into said flume; and defendant denies each and every other allegation contained in said paragraph.

### V.

Referring to the allegations contained in paragraph five of said complaint, defendant denies each and every one of same.

### VI.

Referring to the allegations contained in paragraph six, defendant denies each and every one of same.

## VII.

Referring to the allegations contained in paragraph seven, defendant denies that plaintiff was earning the sum of One Hundred and Fifty Dollars (\$150.00) per month at the time of the accident; and denies that plaintiff was earning any sum, except the sum of Three Dollars and Eighty-five Cents (\$3.85) per day for each day he was actually employed by defendant.

And for a further and affirmative defense to the allegations set forth in plaintiff's complaint, the defendant alleges:

## I.

That defendant is a corporation duly and regularly organized and authorized to do business, and doing business at all times mentioned herein in the Territory of Alaska, and has paid its annual corporation license taxes due to said Territory.

## II.

That on April 19, 1920, plaintiff was in the employ of defendant as a laborer, and on said day was engaged in dismantling a certain flume belonging to the defendant at its hatchery near Loring, Alaska. That the top of said flume was reached by means of a ladder extending from the ground upwards. That plaintiff was thoroughly familiar with the condition of said flume and with the condition of said ladder, and that if said ladder were defective and the top rung of same broke and plaintiff fell to the ground, the said [5] accident was caused solely by the negligence of the plaintiff, and the risk of the same was one of the ordinary, usual, apparent

and obvious risks and hazards incident to plaintiff's employment, and the said risk was assumed by plaintiff.

WHEREFORE, defendant prays that this action be dismissed and that it have and recover from the plaintiff its costs and disbursements herein.

H. L. FAULKNER,  
Attorney for Defendant.

United States of America,  
Territory of Alaska,—ss.

I, H. L. Faulkner, being first duly sworn, depose and say: That I am the attorney in fact and agent of the Alaska Packers' Association, a Corporation, and make this affidavit on its behalf. That I have read the foregoing answer and know its contents, and that the facts stated therein are true and correct, as I verily believe.

H. L. FAULKNER.

Subscribed and sworn to before me this 23d day of November, 1920.

[Notary Seal]

A. W. FOX,  
Notary Public for Alaska.

My commission expires June 11, 1922.

Service admitted this 29th of Nov., 1920.

ZIEGLER & GORE.

Filed in the District Court, District of Alaska,  
First Division. Nov. 29, 1920. J. W. Bell, Clerk.  
By L. A. Green, Deputy. [6]

In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpora-  
tion,

Defendant.

**Reply to Amended Answer.**

Comes now the plaintiff and for reply to the answer of defendant as amended, filed herein, alleges as follows:

**I.**

Plaintiff for reply to paragraph IV of defendant's amended answer denies that the stationary ladder running from the ground to the top of the said flume was a portion of said flume or that it was built into said flume, and in this connection avers that he was not directed to dismantle said ladder or any portion thereof.

For a reply to defendant's affirmative defense set forth in defendant's amended answer, the plaintiff alleges, admits and denies as follows:

**I.**

Plaintiff admits the allegations of paragraph I of defendant's affirmative defense.

**II.**

Plaintiff denies that he was thoroughly familiar

with the condition of said flume and with the condition of said ladder; denies that said accident was caused solely by the negligence of plaintiff, or on account of any negligence on the part of the plaintiff whatsoever; denies that the risk of same was one of the ordinary, usual, apparent and obvious risks and hazards incident to plaintiff's employment, and the said risk was assumed by plaintiff, and in this connection avers that the accident and injury was caused by the defects of and insufficiency of defendant's works and appliances due to the negligence of [7] defendant and its officers as alleged more specifically in the plaintiff's complaint.

WHEREFORE plaintiff prays for judgment as in his amended complaint set forth and prayed for.

ZIEGLER & GORE,  
Attorneys for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

D. J. Gover, being first duly sworn, on oath deposes and says:

I am the plaintiff in the above-entitled action, have read the foregoing amended reply, know the contents thereof and the same is true as I verily believe.

D. J. GOVER,  
Plaintiff.

Subscribed and sworn to before me this 1st day of December, 1920.

[Notary Seal]

A. H. ZIEGLER,  
Notary Public for Alaska.



Filed in the District Court, District of Alaska,  
First Division. Dec. 2, 1920. J. W. Bell, Clerk.  
By —————, Deputy. [8]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED that this cause came  
on regularly to be heard on the 2d day of December,  
1920, before the Honorable ROBERT W. JEN-  
NINGS, Judge of the United States District Court  
for the District of Alaska, Division No. 1, held at  
Ketchikan, and a jury having been impanelled and  
sworn, the following proceedings were had: [9]

**Testimony of G. F. Heckman, for Plaintiff.**

G. F. HECKMAN, called as a witness on behalf  
of the plaintiff, being first duly sworn, testified as  
follows:

Direct Examination.

(By Mr. ZIEGLER.)

Q. State your name.      A. G. F. Heckman.

(Testimony of G. F. Heckman.)

Q. What position do you occupy with the Alaska Packers' Association?

A. Superintendent of the Loring cannery.

Q. How long have you been such superintendent?

A. Just two years.

Q. I will ask you to state whether the Alaska Packers are engaged in the business of catching and canning salmon in the Territory of Alaska.

A. Yes, sir.

Q. By means of machinery and mechanical appliances? A. Yes, sir.

Q. During certain portions of the year they are actually engaged in canning salmon at the cannery?

A. At the cannery; yes.

Q. And during the other portion of the year, the portion of the year from the early spring up until the canning season, they are engaged in preparatory work? A. Yes.

Q. Now, you know where the hatchery belonging to the defendant is located? A. Yes.

Q. That is a short distance from the cannery?

A. Yes—seven miles.

Q. State whether or not there is a sawmill at that hatchery.

A. Yes, there is one there, they operate once in a while to cut a little lumber.

Q. Operate once in a while for what purpose?

A. Cutting lumber for the hatchery. [10]

Q. Have you had occasion to see this particular structure from which Mr. Gover claims he fell?



(Testimony of G. F. Heckman.)

A. I have seen the mill but I have never seen the place where he fell.

Q. You have not seen the place where he fell but you know that it is part of the sawmill?     A. Yes.

Q. Part of the ways and works of the sawmill; is that correct?

A. Yes, as far as I know—I don't just exactly remember—

Q. Now, Mr. Heckman, your company, in consideration of the salmon fry released at the hatchery, is exempted a certain portion of the taxes; isn't that correct?     A. I think so.

Q. On account of releasing the fry at the hatchery?     A. Yes.

Q. So that the hatchery is in a measure operated in conjunction with all the defendant's canneries?

A. Well, I don't know.

Q. Well, by operating the hatchery—

Mr. FAULKNER.—I object to this question as incompetent, irrelevant and immaterial. I do not think it makes any difference what the arrangement is about taxes or releasing the fry.

The COURT.—What is the purpose, Mr. Ziegler?

Mr. ZIEGLER.—I have alleged in the complaint that the hatchery was operated in conjunction with the canneries of the defendant and is therefore a part of their business of catching and canning salmon in Alaska by means of machinery. It is a necessary element of proof in order to bring the case within the employer's liability act.

Mr. FAULKNER.—The question would be

(Testimony of G. F. Heckman.)

whether the hatchery is operated by machinery. That is the only question that we can inquire into under the pleadings.

The COURT.—Is this suit brought under the employer's liability act?

Mr. ZIEGLER.—Yes, your Honor. [11]

Mr. FAULKNER.—We contend that we do not come under the employer's liability act, but the question would be, if he wants to show that we come under the act, that the hatchery is operated by machinery.

Mr. ZIEGLER.—Under the compensation act—the act of 1913—Session Laws of 1913, page 84—which provides, your Honor, that any corporation engaged in business by means of machinery and mechanical appliances shall be liable to any of its employees, etc., that are injured. The act says nothing about whether any particular branch has to be carried on by machinery. The act is a very broad act and says that any person who is engaged in business or is carrying on a business by means of machinery and mechanical appliances shall be responsible for any injuries due to defects or negligence of the defendants, its agents, officers and employees, in the ways, works, etc.

The COURT.—It is a question of law which I can decide later, and it does not affect the facts of the case. It will be admitted, subject, of course, to your objection.

Q. The hatchery is in a measure operated in conjunction with all the defendant's canneries?

(Testimony of G. F. Heckman.)

A. I don't know whether I know or not.

Q. You don't know?

A. The Packers never told me what they were doing—only just what I heard.

Q. You do know that in consideration of releasing these salmon fry the company is exempted from taxes, don't you?     A. Yes,—just what I heard.

Mr. FAULKNER.—I object to that as immaterial—that has no bearing on the question at all.

The COURT.—That is the foundation upon which he predicates his contention that the defendant comes under that act. He may answer that question.

Q. You answered that question, didn't you?

A. Why, I don't know only hearsay. The Packers never told me and I never asked them.  
[12]

Q. You say your company never told you?

A. No, they never told me in regard to how the hatchery is run and I never questioned them.

Q. You understand that that is the way it is run?

A. That is what I understand.

Q. You are the superintendent at Loring?

A. Yes.

Mr. ZIEGLER.—That is all.

Cross-examination.

(By Mr. FAULKNER.)

Q. You are the cannery superintendent at Loring?     A. Yes.

Q. How far is the hatchery from the cannery?

A. Must be between 7 and 8 miles.

(Testimony of G. F. Heckman.)

Q. Any connection between them?

A. In what way?

Q. How do you go from the hatchery to the cannery? A. We go by boat and over land.

Q. Part of it is by water and part by land?

A. Yes.

Q. Across several lakes?

A. Across several lakes; yes.

Q. And the hatchery is a separate institution?

A. Yes.

Q. And it is carried on by means of machinery?

A. Only the sawmill—the other is not run by machinery, I don't think.

Q. Do you know when the sawmill is operated—do you know anything about that? A. No.

Q. Do you go up to the hatchery very often?

A. Not very often.

Q. Who is the superintendent of the hatchery?

A. Mr. Fred Patching. [13]

Q. He is in full charge? A. Yes.

Q. You are the cannery superintendent?

A. At Loring; yes.

Q. How much of the time are you there?

A. From the first of April to October some time.

Q. What is the season for hatching salmon in the hatchery? A. I don't know that.

Q. It is after you leave, isn't it? A. Yes.

Q. Late in the fall? A. Yes.

Mr. FAULKNER.—That is all.

(Witness excused.)

**Testimony of David J. Gover, in His Own Behalf.**

DAVID J. GOVER, the plaintiff, upon being called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ZIEGLER.)

Q. State your name, Mr. Gover.

A. David J. Gover.

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. How long have you resided in Alaska, Mr. Gover?

A. Well, it is a little over a year and a half, I guess, now. I came in June—or May,—May or June.

Q. Speak a little louder.

A. It is something like a year and a half. I came up, I think, last May,—last May a year ago.

Q. Are you a married man, Mr. Gover?

A. Yes, sir.

Q. Have a family? [14]      A. Yes, sir.

Q. Now, state whether or not you ever worked for the Alaska Packers.

A. Yes, sir; I worked for the Alaska Packers,—I left here the night of the 4th of July,—a year ago last Fourth.

Q. That was 1919?      A. Yes, sir.

Q. You started for Loring?      A. Yes, sir.

Q. Where did you work?

A. Well, the next day—

(Testimony of David J. Gover.)

Q. No, I mean where did you work, at Loring or the hatchery?     A. At the hatchery.

Q. And you started in there shortly after the 4th of July?

A. Yes, sir; I went up on the 5th and started in to work on the 6th.

Q. And as what did you hire out,—what did you hire out for?     A. Just a common laborer.

Q. What has been your business practically through your entire life?

A. Well, I have been prospecting a great deal since about along in the '70's.

Q. Were you prospecting just shortly before you went to work at Loring?     A. Yes, sir.

Q. Whereabouts?

A. Why, up in the Rainy Hollow District.

Q. Up above Haines?

A. Yes, sir—west of Haines.

Q. Now, just state briefly what was the nature of your work over there at the hatchery.

A. Well, really it was,—I cut some wood, grubbed some—just anything that came up, and when the fish came on I did what they call washing the eggs—put them in a basket and wash them.

Q. Just general all around work over there?

A. Yes, sir. [15]

Q. State whether or not you were injured at any time at the hatchery.

A. Yes, sir, I was injured there the 19th of April.

Q. The 19th of April, 1920?     A. 1920.

Q. This year?     A. Yes, sir.



(Testimony of David J. Gover.)

Q. How were you injured?      A. Well, by a fall.

Q. You were injured by a fall?      A. Yes, sir.

Q. From what did you fall?      A. From a ladder.

Q. How did you happen to be up on that ladder?

A. Well, Mr. Patching sent me up there to take down some boards off the old flume—the over-shot boards that came down this way.

Q. Just a moment—I will get you to testify from this sketch so the jury will know the place you fell from. Now, the place you fell from, Mr. Gover, state whether or not that was a part of the sawmill.

A. Yes, sir.

Q. Had that been used during the time you were there in connection with the operation of the sawmill?

A. Just the flume carrying off water.

Q. And this ladder went up alongside of a house, didn't it?

A. An old wheel-house—what we call a wheel-house—there was an old wheel in there.

Q. Was there a wheel enclosed in the house?

A. Yes, sir.

Q. What was that used for?

A. It had been used for water-power.

Q. For what purpose?

A. For running the sawmill. [16]

Q. State whether or not this wheel-house was a part of the sawmill.

A. Yes, sir, it was a part of the sawmill.

Q. Now, I will ask you if that sketch fairly represents the wheel-house and the ladder to the flume on

(Testimony of David J. Gover.)

the day that you were injured?

A. Well, that is a pretty fair representation, I should say.

Q. It is not drawn to scale or anything like that?

A. No.

Q. Just a general idea?

A. Just a general idea, yes, sir.

Q. Now, will you state what portion of this would represent the wheel-house? Mark it with the letter A. A. You will have to mark it right here.

Q. That would be the house that enclosed the wheel?

A. Yes, sir,—it went right up the side this way.

Q. Mark that with the letter A. Now, will you point to the ladder upon which you ascended.

A. Right here.

Q. That would be marked by the letter B. Now, you stated you were engaged in taking down some boards from a flume on that day?

A. Yes, sir—the over-shot.

Q. The over-shot of the flume. Will you point to that on this sketch? A. This represents it.

Q. The slanting portion there?

A. Yes, sir—two sections of boards.

Q. That is marked with the letter C. Will you state what these two lines running along here represent?

A. That was supposed,—this would be the tram where we brought logs from the lake up to the saw-mill.

Q. That would be the tramway that the logs came



(Testimony of David J. Gover.)

up to the sawmill on?     A. Yes, sir. [17]

Q. That is marked with the letter D. Now, Mr. Gover, will you state about how high this ladder was—that is, the top of the ladder, where it reached the flume, from the ground?

A. Well, I thought it was something over 20 feet.

Q. You think it is something over 20 feet?

A. I think so, yes, sir—over 20 feet,—probably it was 25—I never measured it.

Q. If the defendant states it was 25 feet—admits it was 25 feet, you would take that as a correct measurement?

A. Yes, sir, because I had an idea it was over 20 feet, and I am not positive, but I think it was probably 25.

Q. What would you state about the distance from the top of the ladder to the old portion of the flume that you were instructed to dismantle,—what would be the distance?

A. Oh, it might have been 6 or 8 feet probably.

Q. 6 or 8 feet?     A. Yes—I couldn't say just how much.

Q. That is your best estimate?

A. I think so—probably not so far.

Q. Now, what time in the day was it you were directed to do this work.     A. It was afternoon.

Q. After the lunch hour?

A. After one o'clock; yes, sir.

Q. Who gave you the instructions?

A. Mr. Patching, the superintendent.

Q. He is the superintendent?     A. Yes, sir.

(Testimony of David J. Gover.)

Q. What were his instructions? Explain by referring to this sketch.

A. He told me, he said, "I want those boards taken off. There are some old ones down here." "Now," he said, "this lower part, leave this—we don't want to bother this at all, only the old ones; take those off and they will do for wood; and those boards that come down here, we want them laid down here [18] to put on the fence." I had been working putting up fence posts, and he—

Q. Did Mr. Patching tell you how to get up to the place where you were to perform this work?

A. Why, certainly.

Q. What did he say?

A. He said, "Go up the ladder there." I said, "How am I going to do that?" He said, "Get a rope and a peavey, or something to get them loose, and take them down."

Q. Did you get a rope and peavey? A. Yes, sir.

Q. And went up the ladder? A. Yes, sir.

Q. When you reached the top of the ladder, marked B, Mr. Gover, state whether or not you had to go towards the point marked C to perform your work?

A. Certainly I did, to get this way.

Q. And in order to get there you had to walk on the flume?

A. Yes, sir,—I walked right on the flume; yes, sir.

Q. I will ask you, Mr. Gover, to explain to the jury how you happened to fall on that day.

A. Well, the way I happened to fall, I was going to come down this ladder here, and I had my left hand,

(Testimony of David J. Gover.)

as I come down, you understand, like this,—my right foot was about the fourth round, and my left hand was here and my right hand on this top round, and as I let loose with my left hand this one pulled out.

Q. Which one pulled out?

A. This one in my right hand.

Q. The top rung pulled out?      A. Yes, sir.

Q. What happened then?

A. I fell—that is what happened, exactly, and if I could stand [19] up I would show you. My right foot being on this round, threw me back out quite a ways, and I tried to get my head between my shoulders, like this, because I was scared—I had a fall coming, gentlemen, and I knew it and I knew there was nothing to help me.

Q. There was no way by which you could grab the ladder and save yourself from falling?

A. I couldn't do nothing—I was out in the air, and falling.

Q. And you fell backwards down to the ground?

A. I fell down to the ground.

Q. Where did you strike when you landed on the ground?

A. I struck on my hips and back—right across here, and having my head down that way saved my head.

Q. You saved the back of your head—

A. Yes, sir; right like that.

Q. Did you strike on the ground or did you strike the tramway?

A. I think I struck the edge of the tramway be-

(Testimony of David J. Gover.)

cause this part of my body was under there and my head was sticking out, and I tried to turn over and I couldn't move only my left hand and my head—that was all I could move.

Q. You were working alone at the time?

A. Yes, sir, I was there alone.

Q. When you fell on the ground, Mr. Gover, did you notice the round that had pulled out anywhere?

A. When Mr. Orton helped me up I seen it laying there, yes, sir—I seen it laying on the tram—right on the tram.

Q. What did you observe the condition of the rung to be?

A. It was laying there and the nails were out, and on one side you could see rotten wood between the spikes.

Q. You could see rotten timber between the spikes?

A. Yes, sir, you could—you could see rotten wood between those spikes—pieces of rotten wood there.

Q. Now, in going up this ladder to perform your work, Mr. Gover, did you exercise the same degree of care that you did while about your other work? [20]

A. Yes, sir, I did.

Q. You looked at the ladder?      A. Yes, sir.

Q. And you didn't notice at that time there was any defect in the ladder?

A. No, I did not. I thought it was just like the other things around there—it would be all right, and I just took it that it would be all right to go ahead,—just the same as I would come up the stairs here, or anything like that,—I went ahead with my work.

(Testimony of David J. Gover.)

Q. Why didn't you stop your work and make a careful inspection of this ladder?

A. I wasn't told to do that, sir.

Q. Mr. Patching had sent you up there, hadn't he?

A. Yes, sir.

Q. And you relied on the fact that he would—

Mr. FAULKNER.—I object to any more of these leading questions. I don't object to leading a little bit, but I think this last question is highly leading.

The COURT.—Yes, that last question is highly leading, Mr. Ziegler.

Q. You say Mr. Patching sent you up the ladder?

A. Yes, sir.

Q. And you followed his instructions?

A. I certainly did as near as I could—I always did.

Q. I will ask you, Mr. Gover, if it was any part of your instructions from Mr. Patching to take down this ladder or any portion of the wheel-house?

A. Oh, no, nothing said about that, only the over-shot and some top boards on the flume below—that was all—nothing said about the wheel-house or the ladder.

Q. No instructions given you to dismantle the ladder?     A. No, sir.

Q. Any portion of the ladder?     A. No, sir. [21]

Q. Did he tell you to take down any portion of the flume with the exception of what you have termed the over-shot, marked with the letter C there?

A. No, sir; only some old boards were off below and he said, "Be careful; don't hurt the flume be-



(Testimony of David J. Gover.)

cause we want to use that still." That was down here close to the ground.

Q. Did Mr. Patching tell you to be careful about the ladder, or anything of that kind?

A. He said, "Look out for those wires that go from the dynamo to the engine." He said, "Look out for those in letting the boards down."

Q. Not to break the wires?

A. Yes, sir, and not to break the lower flume.

Q. Did he tell you anything about the ladder?

A. No, sir.

Q. Did he warn you it was unsafe?

A. No, sir, he did not.

Q. Said nothing about it?      A. No, sir.

Q. Now, who was the first person you saw after you fell, Mr. Gover?

A. The cook, Mrs. Grant. I hollered, tried to make a noise just as soon as I fell—screamed, and she came out and said, "What is the matter?" and I said, "I fell," and she run and got Mr. Orton.

Q. He was employed there at the place?

A. Yes, sir; I think he was at the blacksmith-shop over there, or some place working—she knew where he was.

Q. State whether or not they assisted you into the bunkhouse.

A. He came back then and then Mrs. Grant run and got Mr. Patching, and then he came.

Q. Now, Mr. Gover, I will ask you to state whether or not there were some staging—planking—around this wheel-house?

(Testimony of David J. Gover.)

A. Yes, sir, there was some staging out this way—it came out quite a little ways there that, mind you, when I fell I fell [22] out and I missed that staging, and I might have hit one brace that came up this way when I got down close to the tram.

Q. To the ground?

A. Yes, sir; but I fell out and I missed that staging entirely.

Q. Do you know how far it is between the logway marked with the letter D here and the bottom of the wheel-house marked A,—what is the space between them?

A. Oh, it might be 4 or 6 feet, now, but I never measured it—I judge it may be between 4 to 6 feet, maybe. It isn't so very far.

Q. And you say the rung of this ladder was laying on the logway? A. Yes, sir.

Q. The tram? A. Yes, sir.

Q. Do you know what time this was, Mr. Grover—what time of day?

A. Well, it was about 4 o'clock, I would judge—something about like four.

Q. How do you know that?

A. I know by looking at my watch just a little while before, when I was down with a board, and it was fifteen to four at that time, and then I had to work getting this board loose, and probably I was half an hour, or something like that, getting my rope and everything.

Q. When was the next time you looked at your watch? A. It was broke.

(Testimony of David J. Gover.)

Q. Broken from the fall?      A. Yes, sir.

Q. At what time did your watch stop?

A. Fifteen after four, I think—I believe so, if I remember right—something like that.

Q. Now, what took place after you fell and Mrs. Grant and Mr. Orton came there?

A. Mrs. Grant went and got Mr. Patching, and they came back and got the tram car and put me on that and took me to the bunk house. [23]

Q. How were you affected by the fall at that time?

A. Well, I was very near paralyzed,—I couldn't use this arm, and I couldn't use my legs, and I hurt so bad that I don't think a man could hurt any worse,—I don't see how he could.

Q. Did you suffer much pain?      A. Indeed I did.

Q. Were you confined to your bed after that?

A. Yes, sir; I was.

Q. For how long?

A. I couldn't say just exactly how long it was before I got out, but I know when I was in bed there that Mr. Archibald used to try to help turn me and he used to slide the blanket, was the only way I could stand it for several days.

Q. That was in turning over in bed?

A. Yes, sir.

Q. How long did you stay out at the hatchery after you were injured, Mr. Gover?

A. Well, sir, I couldn't say—I couldn't say just how long I was there,—six weeks, maybe.

Q. I don't want you to state exactly—as near as you can remember.



(Testimony of David J. Gover.)

A. Might have been six weeks—I am not sure.

Q. Did your condition improve any at that time?

A. Oh, yes, it improved some from what I was the first two or three weeks, because I tell you I couldn't even take a drink of water—I had to take water through a straw or some kind of little business to suck it through,—I couldn't take a cup and take a drink of water.

Q. How did you happen to come to Ketchikan?

A. Well, Mr. Patching said did I want to go to the hospital or see the doctor, and I told him whenever I thought I could stand it I would like to go down to the doctor, and I told him one day—Mr. Orton was coming and a young man the next day with mail, and I was coming down anyhow, and they said they would help me, so I came down. That was quite a little [24] bit after I had used crutches,—he got me a pair of crutches there and I used them; and I came down, and I had a pretty hard time getting down at all; I got down finally to the boat.

Q. You got down to Ketchikan?

A. To Loring. Mr. Patching phoned down to Mr. Heckman to give me an order for the doctor; and he said, "I am not going in"—Mr. Patching says, "but the bookkeeper will give you an order," and he did, and I came into Ketchikan.

Q. Did you go to see a doctor then?

A. Yes, sir; the next day.

Q. Who was the doctor?      A. Doctor Ellis.

Q. Did he examine you?

A. Well, some,—he examined me around here, but

(Testimony of David J. Gover.)

then he didn't make a thorough examination like the other doctors did.

Q. Did Dr. Ellis state to you then how you were injured?

A. No, sir; he said there wasn't any bones broke.

Q. Said there were no bones broken?

A. Yes, sir.

Q. State whether or not he said you had rheumatism and that that was all that was the matter with you.

A. He didn't say that,—he said after while, "You ought to go to the springs," and he gave me a receipt or prescription to get some stuff down at Mr.—well, the drug-store—at Ryus', and when the drugman put that up I said, "What is that good for, anyhow?" He said, "Rheumatism." I said, "I ain't got rheumatism—I am hurt."

Q. Did you take that medicine?

A. I took a few doses of it—I took probably half of it.

Q. Did it do you any good?

A. It hurt me,—it hurt my kidneys.

Q. Did he examine you again after that?

A. Well, I went up there one evening and he examined me here where I had such an awful pain—right here; he said, "That [25] is the sciatic nerve right there between the two bumps there on the hip and the thigh bone there," and he said, "The sciatic nerve is what is hurt, or what is wrong," and he sent his man down and he got some,—oh, I don't know—a tube of some kind of salve or ointment and he rubbed me

(Testimony of David J. Gover.)

with that. He rubbed this ointment on, and that would relieve that spot there for probably an hour or so, but permanently it wouldn't do any good—didn't do any good, and they put on some kind of light.

Q. Did you explain to the doctor how you felt at that time—what the trouble was?   A. Yes, sir.

Q. How were you suffering at that time?

A. Well, I was suffering with my—I was suffering on the inside here badly, and my legs were numb—no feeling in them at all—my feet.

Q. How were your internal organs at that time?

A. They were in bad shape all the time.

Q. Just explain the condition.

A. I could not have a passage without an injection at all—I haven't since I have been hurt.

Q. How was your bladder affected?

A. Very bad,—I couldn't hold my urine at all,—no control over it at all.

Q. The six weeks, or whatever time it was, you were at the hatchery, did you have any medical attention at all other than what Mr. Patching and the people there could give you?   A. No.

Q. Did that same condition prevail out there with reference to your internal organs?   A. Yes, sir.

Q. While you were at the hatchery?   A. Yes, sir.

Q. After that second examination of Dr. Ellis, state whether or not you consulted any other doctor.  
[26]

A. Yes, sir; after that,—well, I seen Mr. Heckman and he said—

(Testimony of David J. Gover.)

Q. Which Mr. Heckman?

A. Mr. Fred Heckman; and he said the doctor said there wasn't nothing the matter with me. I said, "I will have to see another doctor, then, if that is the case—if he don't know."

Q. At that time were you in the condition you have just stated?      A. I were.

Q. State whether or not you were suffering pain.

A. I certainly was suffering pain.

Q. In what portions of your body?

A. Oh, from here down to about,—through my hips—right through here and here, and in my back, right here.

Q. What portion of your back—the lower portion?

A. Well, it is just a little above the hip.

Q. Whereabouts in your back—state whether or not it was near the spine.

A. Yes, sir; right back there—right in there.

Q. Then you stated you went,—finish your conversation with Mr. Heckman.

A. Mr. Heckman said, "I will have to go by what the doctor says, and he says there ain't nothing the matter with you." I said, "That is strange; I will have to see another doctor, then." "Well," he says, "we will take care of you for a while yet." "Well," I says, "that is all right—that is up to you," or something, "but I will have to see another doctor"; and he said, "We won't pay him." I said, "I cannot help that." So I went back to Mr. Ellis and he said, "We will see; maybe we will send you up to the springs"; and I said, "Well, now, there is

(Testimony of David J. Gover.)

good doctors down below—why don't you send me down there, down home? I want to go home, just like any other man would, I reckon, want to go home." "Well," he said, "we will see about it," but he didn't go to see about it, and the rays seemed to be making me worse at that time,—they would ease me at first for a while by warming up the [27] hip, but is seemed like it was getting worse all the time in my back.

Q. Then did you go to see Dr. Mustard?

A. Yes, sir. Let me see,—I saw Mr. Heckman again,—I saw Mr. Heckman once more after that before I saw Mustard, and I was talking with him about going up to the springs,—the doctor said something about that. "Well," he says, "I guess we cannot do any more for you," he says; and the clerk told me he said he wouldn't pay any longer for the room. "Well," I said, "all, right; I will pay for the room then—I will have to see another doctor"—and Mr. Heckman told me the same thing, that he wouldn't do it, but he said, "We will send you down home if you want to go down home, if you will sign up"—

Q. He said if you would sign up he would send you down home?      A. Yes.

Q. Down below?      A. Yes.

Q. Did he say what he wanted you to sign up?

A. He just said, "If you will sign up with the company,"—give me to understand if I would sign that I wouldn't come back on the company they would send me home.



(Testimony of David J. Gover.)

Q. Pay your way down below?      A. Yes.

Q. After that did you go to see Dr. Mustard?

A. After that I went to see Dr. Mustard—right after that.

Q. Did he examine you?      A. Yes, sir; he did.

Q. Did he tell you what was wrong with you?

A. Yes, sir; he told me my spine here was hurt—that I was hurt in the back, and he took and strapped me up clear from my hips up to here, and he said, “You keep that on for about three days, and come up and tell me how you are doing.” Well, it wasn’t—I think the next day I changed crutches,—those crutches were a little too short, and when the doctor [28] straightened me up there I got those, which were about two inches longer than the others, and I went back then the third day, and Mr. Mustard taken off these straps. “Now,” he said, “you take a good hot bath and come back and we will see how you are.” At that time I told the doctor, “I am awful anxious to go home, Doctor, and I would like to go home.” He said, “Well, we will see”; and I went back up after I had taken this bath and he strapped me up again, and he says, “Now,” he says, “I think you can walk better.” Well, that braced me up, and I seen the Captain of the “Jefferson,”—he came into the hotel—and I said, “I would like to go home with you, Captain,”—I came up with the same man and I had seen him a time or two,—just spoke to him,—he was an awfully nice fellow—

Q. No need to go into all those details.

A. That is all right.

(Testimony of David J. Gover.)

Q. Did you go down below after that?

A. Yes, sir; I went down that day.

Q. Dr. Mustard, however, you stated, told you your spine was hurt? A. Yes, sir.

Q. When he examined you? A. Yes, sir.

Q. State whether or not in his examination he struck any portion of your spine that was very sensitive. A. Yes, sir; he did.

Q. And it was after that you straightened up, you say? A. Yes, sir; it helped me right here.

Q. It helped you and you got new crutches,—longer crutches?

A. Yes, sir;—with his fingers just pressing that way and he found—

Q. You stated that then you went below?

A. Yes, sir.

Q. Went to your home? A. Yes, sir. [29]

Q. Where is your home?

A. My home is at Cottage Grove, Oregon.

Q. You went down there?

A. Yes, sir; I went just right straight down.

Q. Did you have medical treatment down there?

A. Yes, sir.

Q. What did you discover was wrong with you?

A. Just about the same as Dr. Mustard,—the doctor told me, he said, “You are in a pretty bad fix”—

Mr. FAULKNER.—We object to what somebody told him down in Oregon.

Mr. ZIEGLER.—That isn’t so much hearsay, your Honor,—it is what he discovered was wrong



(Testimony of David J. Gover.)

with him,—it is the only way a man can tell those things.

The COURT.—What he discovered would be one thing, and what somebody else told him would be another.

Mr. ZIEGLER.—About the only way an injured man can discover such thing is by consultation with his physician.

Mr. FAULKNER.—He has a physician here.

The COURT.—You could have taken the deposition of the physician.

Mr. ZIEGLER.—I can prove that by Dr. Mustard, but I wanted to ascertain what he found was wrong with him down below.

The COURT.—You cannot ask him that if it depends upon what somebody told him.

Q. You say you did have medical treatment down below, Mr. Gover?     A. Yes, sir.

Q. How did you get along after you left here—any better?

A. No, I didn't get along any better.

Q. What was your condition?

A. My condition was just about the same as it was here.

Q. What was the matter with you down below?

A. My spine and my back and hips was in bad shape, and my legs were numb all the time.

Q. How were you internally,—were you all right inside?     A. No, sir. [30]

Q. What was wrong with you?

A. I had to use an injection all the time,—I was

(Testimony of David J. Gover.)

just the same as I was here.

Q. State whether or not you have had to pursue that same method all the time.

A. Yes, sir; all the time since,—every time, gentlemen.

Q. How is your bladder?

A. My bladder is in very bad shape.

Q. What do you mean by very bad shape?

A. I mean I cannot hold my urine.

Q. Does that condition exist now?      A. Yes, sir.

Q. Is it getting any better or worse?

A. Well, it is getting a little worse.

Q. Now, Mr. Gover, did you ever have any trouble of that nature before this injury?

A. No, sir; I did not.

Q. What was the condition of your health before this injury?

A. I thought it was the common average of all prospectors—sometimes would be a little bilious or have a headache, but otherwise I was what you might call pretty skookum.

Q. During the time you worked at Loring there did you lose any time on account of sickness?

A. I lost a day, I think, twice, that I was sick at my stomach—sick headache, and I lost a day.

Q. Did you ever have rheumatism before that time?

A. I never was bothered with rheumatism at all.

Q. When Dr. Ellis told you that you had rheumatism, did he tell you that they had informed him at

(Testimony of David J. Gover.)

the hatchery that you never fell out there and that you were just putting on?

A. No, sir; he never told me that.

Q. He did not?      A. He did not.

Q. You stated they had a blacksmith-shop there at the hatchery? [31]

A. Yes, sir; they have a shop there.

Q. And an electric dynamo?      A. Yes, sir.

Q. Boiler?      A. Yes, sir.

Q. Sawmill machinery?      A. Yes, sir.

Q. And those are the things with which they carried on that business, are they?      A. Yes, sir.

Q. With machinery and mechanical appliances?

A. Yes, sir.

Q. I think you stated this wheel-house was a portion of the sawmill?      A. Yes, sir.

Q. Part of the ways and works?      A. Yes, sir.

Q. And you had nothing to do with this ladder, Mr. Gover, did you—with control of it or the inspection of it?      A. No, sir.

Q. Or the construction of it?      A. No, sir.

Q. Now, how much were you earning out there, Mr. Gover,—what pay were you getting?

A. \$3.85 a day and board.

Q. Which would make approximately \$5.00 a day?

A. Well, I suppose so.

Q. Allowing \$1.15 a day for board?

A. I suppose so—I don't know—that is what we were supposed to take,—that is what I was told before I went up that is what we would get.

Mr. ZIEGLER.—If the Court please, we offer

(Testimony of David J. Gover.)

this in evidence, this sketch, in connection with the plaintiff's testimony, to show the general situation there. [32]

Mr. FAULKNER.—No objection.

(Whereupon said sketch was received in evidence and marked Plaintiff's Exhibit "A.")

Q. Now, Mr. Gover, how have you been able to sleep since this injury?

A. I don't sleep good at all—just a little nap—I don't sleep—I am nervous.

Q. How has your appetite been?

A. I will tell you; it isn't very good, my appetite isn't.

Q. Do you eat regularly like you did before you were injured?

A. No, sir, I don't; I don't eat near as much as I did before I was injured—not a thing like it. My wife all the time is trying to coax me to eat something. I don't care to eat—have no appetite whatever to speak of.

Q. Mr. Gover, who sent you up that ladder?

A. Mr. Patching sent me up there.

Q. State whether or not in going up and down the ladder you used the same degree of care that you did about your other work.

A. Why, certainly, I did; I thought he wouldn't send me up there if the ladder wasn't all right, so I just went ahead.

Q. What did you say?

A. I said I thought he wouldn't send me any place that wasn't all right, and it looked all right, but [I

(Testimony of David J. Gover.)

suppose a person with a mallet tapping it would have found out it was defective; but just looking at it you couldn't see it was defective. I supposed he had it examined, and all the things, and I just went about my work.

Q. The same as you did with your other work?

A. The same, and as careful as I did any other work,—I tried to be careful, but that pulled loose with me and down I come before I had any show to catch anything or do anything.

Mr. ZIEGLER.—That is all. [33]

Cross-examination.

(By Mr. FAULKNER.)

Q. When you were picked up, Mr. Gover, they took you to the bunkhouse? A. Yes, sir.

Q. And you saw the slat lying on the tramway?

A. I showed that to Mr. Orton.

Q. How far was the tramway from the ladder, about?

A. I should judge maybe—from 4 to 6 feet.

Q. From 4 to 6 feet?

A. Yes, sir,—something like that.

Q. That is from the foot of the ladder out to the tramway? A. Yes, sir; something like that.

Q. And this rung was lying on the tramway?

A. Yes, sir.

Q. And you observed the end of it was rotten?

A. I observed there was some rotten wood—three spikes,—I observed three spikes in each end, because I wondered how it happened to get loose the way it did.

(Testimony of David J. Gover.)

Q. Did you see the other end of the slat?

A. There was three spikes in each end, and one end of it I noticed some rotten wood between the spikes,—some short pieces of rotten wood.

Q. These three spikes were sticking out, were they?     A. Yes, sir.

Q. They had been pulled out from the ladder?

A. Yes, sir, out of its place—it was morticed in.

Q. And you had your weight on that pulling it, did you?

A. No; I had this hand on that rung, and my right foot down about the fourth rung.

Q. The one that gave way was the top rung?

A. Yes, sir,—my right hand.

Q. And that was set in a groove in each end, was it, of the ladder? [34]

A. Just a little groove—there wasn't much of a groove—just a little set-in.

Q. It was fitted in, was it?

A. Oh, I should judge it might have been a half inch, or a little notch in there.

Q. When you fell you say you went out a distance of about 4 to 6 feet and hit the tramway?

A. I fell back. I had my right foot on this rung, understand, and of course when I fell I stiffened myself and I went out—I didn't go straight down—I couldn't go straight down, my feet didn't slip off, understand, but I had that foot on the rung, and when I fell I fell back, and I tried to get my head down between my shoulders that way.

Q. Your feet did not slip at all?



(Testimony of David J. Gover.)

A. This foot didn't slip until after I got out a ways.

Q. Now, Mr. Gover, you say that from where this incline on Plaintiff's Exhibit "A,"—you say the incline which you have marked C, the flume, or the boards coming down there started about 6 feet away from the ladder?

A. I wouldn't be positive where it started,—it started a little ways from that ladder.

Q. It was approximately 6 feet?

A. It might have been 4 or it might have been 6.

Q. It was some little distance away?

A. It was a little distance away from the ladder, yes, sir.

Q. Now, Mr. Gover, looking at this Plaintiff's Exhibit "A," facing this exhibit, you say there was staging or something on the side of this structure which you have marked here with the letter A, which came out not quite to the ladder—is that true?

A. Not quite to the ladder?

Q. Yes.

Mr. ZIEGLER.—I don't think he testified that way, Mr. Faulkner.

Mr. FAULKNER.—I may be mistaken. [35]

Mr. ZIEGLER.—I think you are.

Q. Did you notice anything on the side of this structure which you have marked A?

A. I saw there was something laying along there—I saw there was a little board laying along there, but, understand, I fell with my foot here which threw me outside.

(Testimony of David J. Gover.)

Q. You went out over that board?     A. Yes, sir.

Q. Wait a minute—I want to get the position of that board, Mr. Gover,—about where was that?

A. I couldn't say, but I think—

Q. Approximately, I mean.

A. It might have been halfway down,—now, I am not sure.

Q. Six feet?     A. It might have been.

Q. And it extended out across the face of the ladder?     A. This way.

Q. Yes, out toward the letter C on this exhibit?

A. I am not sure about that, whether it did or did not,—yes, it may have done that, but I fell clear outside.

Q. You fell clear outside?

A. Yes, clear outside of that.

Q. That is the point—and you had a peavey, you say, up there?     A. It was up in the flume?

Q. Where did you leave that peavey?

A. Where did I leave that peavey?

Q. Yes, when you fell.

A. You see, I loosened the top of the board and put my rope on, then I would go down on the platform below and loosen the bottom of the board and let it down; and the peavey was down there I think at that time.

Q. You don't know just where the peavey was?

A. I am not sure.

Q. You were using a peavey to pry off the boards?

[36]

A. Yes; because I couldn't reach them with the

(Testimony of David J. Gover.)

old axe,—any way to get them loose, see.

Q. What time did you begin this work of tearing down the structure, Mr. Gover?

A. It was in the afternoon.

Q. About what time,—did you begin right after lunch?

A. I am not sure whether I went there and worked a little on the fence, setting the posts and tamping them in, or whether I went right to work at that,—I am not positive about that, right after lunch.

Q. But you looked at your watch at a quarter to four?

A. Yes, it was about that time, along after I had worked there, and I was trying to get those boards down before quitting time. I had fixed the lower part and piled it up as Mr. Patching said, which I think they will admit, and then that was the last thing I was doing, was getting those boards down, and I think that is about the time; yes, sir.

Q. And your watch stopped at a quarter after four?

A. About that time, if I remember right,—it was a little after four, anyhow, and I will tell you how I know about it being broke. It was running all right, and after I was hurt I asked Mr. Orton to see what was the matter with my watch—it wouldn't run, and he said the hair spring was broke.

Q. The watch was in your pocket?     A. Yes, sir.

Q. On which side did you strike the ground when you fell?     A. I fell right on my back here.

Q. Right on your back?     A. Yes.

(Testimony of David J. Gover.)

Q. You fell clear back, backwards?

A. Fell backwards.

Q. And landed on your back?

A. Right across my hips here.

Q. Now, did you have any bruises? [37]

A. There was a green spot down,—I wouldn't wonder you could trace down the backbone there now and find it—a green spot, but no cut.

Q. No black and blue marks?

A. It was a little blue—I guess there was some blue spots on my soft places.

Q. It wasn't cut in any way?

A. No, it wasn't cut,—you see, I had on pretty considerable clothes.

Q. You allege in your complaint here that you fell on your hip and right side?

A. Right across here I fell. Hit a little harder right up along here than I did on this side.

Q. And you allege that you fell and struck your left hip, side and shoulder. Is that correct, or did you fall squarely on your back?

A. Well, from the way, the best I can remember, I struck right on there, a little more on the left side than on the right side, see,—a little more on there, and probably quite a bit more,—that side must have hit on the tram.

Q. It didn't break your arm?

A. No, it didn't break my arm.

Q. Or your leg?

A. Didn't break any bones.

Q. Didn't break any bones at all?      A. No, sir.

(Testimony of David J. Gover.)

Q. And you observed no cuts—no abrasions of the skin?     A. No, no cuts.

Q. And you didn't see any bruises?

A. Oh, yes; there was bruises.

Q. Where?

A. There was bruises on my hip there. I remember taking the clothes off, and there was bruises a long time afterwards on my back. [38]

Q. It took some investigation to discover any bruises?     A. Not very much.

Q. Now, was Mr. Patching up on the flume there before you commenced to work?     A. That day?

Q. Yes.

A. I didn't see him.

Q. Didn't you see him there at all?

A. No, sir, I didn't see him.

Q. And this flume, you say, that you were dismantling was connected with the sawmill?

A. Yes, sir.

Q. What do you mean by that, Mr. Gover? How do you mean it was connected with the sawmill?

A. Well, connected with the business of the sawmill.

Q. In what way?     A. In carrying water.

Q. As a matter of fact, it wasn't being used at all, was it?     A. It had been after I went there.

Q. It wasn't being used at that time?

A. Right then at that time; no.

Q. It was being torn down, wasn't it?

A. Just that part of it—that is the first part I seen torn down.



(Testimony of David J. Gover.)

Q. Do you know where it is now?

A. I don't know anything about it.

Mr. ZIEGLER.—I object to that, if the Court please, as being immaterial, where it is now.

Q. In what way, then, was this structure you were tearing down connected with the sawmill, Mr. Gover?

A. Part of the flume.

Q. Part of the flume, but how was it connected with the sawmill? It was part of a flume, we know that, but in what way was it connected with the sawmill? What did it have to do with the sawmill?

A. This wheel-house—this flume had furnished water for them— [39] I should judge that would be the explanation.

Q. At one time? A. Yes.

Q. Not at that time?

A. Not right at that time; no, sir.

Q. And the sawmill wasn't running, was it?

A. Not right at that time.

Q. And hadn't been for some time?

A. Not very long before that.

Q. What time did this accident happen to you?

A. In April—April 19th.

Q. How far is that hatchery from Loring—from the tide water? A. I should judge 7 or 8 miles.

Q. And it is operated and kept going in the winter, isn't it? A. I don't think so.

Q. You don't think so? A. No.

Q. It wasn't operated last winter?

A. No—I think it was operated last winter.



(Testimony of David J. Gover.)

Q. There is plenty of water there all the time, isn't there?     A. Yes.

Q. Was there any water running in the flume at the time you were tearing it down?

A. Yes, sir, down in the lower flume there was.

Q. Nothing going over this grade?     A. No, sir.

Q. And hadn't been for a long time, had there?

A. I don't remember just how long—quite a little while.

Q. Now, Mr. Gover, you said that you were taken into the bunkhouse and you remained there for some time?     A. Yes, sir.

Q. Under the treatment of Mr. Patching and Mr. Orton and the other men there?

A. Well, Mr. Orton was pretty busy; but Mr. Archibald and old [40] Mr. Donnelly helped me quite a bit,—he rubbed my legs more than anyone, and my feet.

Q. Did you tell Mr. Patching you wanted to go down for treatment?     A. Right then?

Q. Yes.

A. I don't think so, right then at that time, because I will tell you, I couldn't stand it to be moved.

Q. Did you tell him at any time that you wanted to go?     A. Yes, sir.

Q. And then you went?     A. Yes, sir.

Q. When you told him you wanted to go you went?

A. I told him I wanted to go to the doctor; yes, sir.

Q. And while you were there at Loring, and since

(Testimony of David J. Gover.)

then, you have had trouble with your bowels?

A. I did right then,—they know that.

Q. You had constipation?

A. They knew right then—they had to use a syringe on me.

Q. How long did they use that, Mr. Gover?

A. All the time—every few days.

Q. All the time you were at Loring?

A. Yes, sir, at the hatchery.

Q. I mean at the hatchery.      A. Yes, sir.

Q. They used that all the time?      A. Yes, sir.

Q. You were there how many weeks—about 6 weeks?      A. I judge so.

Q. How was your appetite then?

A. Well, I will tell you, my appetite wasn't extra good.

Q. You have had trouble ever since then?

A. Yes, sir.

Q. Ever since you fell?      A. Yes, sir. [41]

Q. And you have been lame?      A. Yes, sir.

Q. You have been obliged to go on crutches all the time?      A. Yes, sir, I am.

Q. Where did you get your first crutches, Mr. Gover?      A. Mr. Patching gave them to me.

Q. What did you do with those?

A. I used them.

Q. No, after you were through with them?

A. I took them over to the store and told them to send them back to Mr. Patching.

Q. To the drug-store?      A. No, sir.

Q. Which store?      A. Mr. Heckman's, I think.

(Testimony of David J. Gover.)

Q. Then what did you do—did you have some other crutches?

A. I got another pair of crutches.

Q. How long after you got these before you sent the others back?     A. A day or such a matter.

Q. And then you took the others to the store and sent them back?

A. The day I went away I sent them over there.

Q. When you came down from the hatchery to tide water there, Mr. Gover, how did you come,—what is the route?

A. Mr. Orton and another gentleman—I think his name was Farrell, or something—they helped me down. I used my crutches—came down with my crutches.

Q. I mean how is the route? Is it over the land or over the sea, or how?

A. We came on the tram car whenever there was a tram car, and came down in a boat—a little motor boat; and then they put me on the tram car and wheeled me there to the top of the hill, and I went down with my crutches.

Q. You walked down from there?

A. Yes, sir. [42]

Q. To the next lake?

A. Yes, sir; and took the boat from there down to the next tram and put me on a car there.

Q. At the next tram there was a hill, wasn't there?

A. A hill?

Q. Quite a steep hill there at the second tram—did you notice that?

(Testimony of David J. Gover.)

A. Didn't notice any hill at all,—oh, yes, there is a hill; yes.

Q. How did you go down the hill, Mr. Gover?

A. They took me down on the tram.

Q. They took you down the hill on the tram?

A. Yes.

Q. How did they keep the tram from running away with you? A. They held the brakes.

Q. On the steep hills on the second—

A. The second place,—you are talking about the second place?

Q. Yes, I am talking about the second road, from the hatchery down to the salt water.

A. Now, let us get this right. The first one, you understand, I walked down; the second one they took me down on the tram—they held the brakes, Mr. Orton did, and the other man got on in front of me.

Q. The steep hill you went down on the car.

A. Yes, sir. The boys went down ahead of me, and I said, "Did I keep you waiting very long, boys?" They said, "No, not very long."

Q. They went down ahead of you?

A. Yes; and I went down the best I could.

Q. How long did you treat with Dr. Ellis before you went to see Dr. Mustard?

A. I am not sure—I could find out, but I am not sure.

Q. About how long was it—six weeks—five weeks?

A. Four or five weeks, I should think.

Q. How many times did you see him during that time? [43] A. I saw him several times.

(Testimony of David J. Gover.)

Q. Did you see him a good many times?

A. Yes; several times.

Q. You went to his office several times?

A. Yes; I went up to his office to get these treatments he was giving me,—it was awful hard work to do, I will tell you that.

Q. He came down to see you at the hotel, didn't he?

A. Yes, he came to the hotel once or twice; and then he was going to come down, and he didn't come, and I waited; and I used to go down to lunch about 9 or 10 o'clock; and then in the evening, along late in the afternoon—

Q. And you cannot walk now without the aid of crutches?

A. No, sir—I can't walk and I can't do anything.

Q. You are unable to do anything at all?

A. Yes, sir, I am.

Q. You have been giving a good deal of thought to this case, haven't you, Mr. Gover?

A. I have not.

Q. That never affected you in any way?

A. I don't know—the thinking, I really don't think it has, because I will tell you, in the first place, I didn't think anything about the case. I thought they would do about what was right, and I didn't worry about it—I was trying to get well.

Q. Did you ever have any conversation with Mr. Orton up at the hatchery before you were injured about compensation in case you should be hurt?

A. I don't remember.

(Testimony of David J. Gover.)

Q. You are quite sure of that?

A. I don't remember it.

Q. Did you, some few days before this fall from the ladder, ask Mr. Orton about compensation in case an employee up there were injured?

A. Why, no. [44]

Q. What is that? A. Why, no.

Q. You didn't do that? A. Why, no.

Q. Do you know a man by the name of Dila-  
baugh, at the hatchery?

A. I met a man by the name of Dilabaugh here.

Q. Do you contemplate trapping with Mr. Dila-  
baugh when this case is tried, out in the woods?

A. If I was able to go I would, and may I ex-  
plain something right now?

Q. I just want an answer to the question, Mr.  
Gover.

A. If I was able to go; yes.

Q. Isn't it a fact that you are making arrange-  
ments now to go out trapping when this suit is over,  
with Mr. Dilabaugh? A. No, sir.

Q. Just this question—didn't you write Mr. Dila-  
baugh a letter and tell him you wanted to go out  
trapping when this case is over?

A. If I am able to go, and I am that way yet.  
My wife will tell you I want to go—I like to trap—  
I want to go out and trap, and I had a nephew  
coming here and I expected to go out with Mr. Dil-  
abaugh if I was able—

Mr. ZIEGLER.—If the Court please, if there is  
any such letter as counsel has intimated, I would



(Testimony of David J. Gover.)

like to make a demand on him to see the letter.

Mr. FAULKNER.—I haven't got it.

Mr. ZIEGLER.—I wanted to find out if you had it.

The WITNESS.—It is hearsay.

Mr. FAULKNER.—It isn't hearsay if you say so, Mr. Gover. You say you don't remember the conversation with Mr. Orton about damages in case you should be injured? A. No, sir; I don't.

Q. Do you remember the first day you went to see Dr. Ellis after you came to Ketchikan? [45]

A. Do I remember?

Q. Do you remember the circumstances of your going to see Dr. Ellis?

A. Oh, yes; I remember.

Q. Did you have a conversation with Dr. Ellis about getting compensation for being injured, the first time you were in his office? A. I say no.

Q. You didn't have any such conversation?

A. Why, no; I wanted to get cured—that is what I went to him for.

Q. So you didn't discuss that with him?

A. Why no.

Q. Now, Mr. Gover, you say that this injury has caused you a good deal of trouble internally?

A. Yes.

Q. You have had trouble with your bladder and your bowels? A. Yes, sir.

Q. And your appetite? A. Yes, sir.

Q. And you cannot sleep very well?

A. No, sir.

(Testimony of David J. Gover.)

Q. And you had none of those troubles before?

A. Nothing to speak of.

Q. Isn't it a fact that you did have trouble with constipation before you—

A. Just like anyone else would—Mr. Orton or anybody, when they eat something which don't agree with them.

Q. Isn't it a fact that you told Mr. Patching before this fall that you were troubled with chronic constipation, and asked him if you could have some black figs?     A. Black figs?

Q. Yes.

A. I told him I liked black figs and they were good to keep that off; and so they are. There are some things you eat, if you eat black figs you don't need anything else. We always take them when we go prospecting—my nephew and I. [46]

Q. You did tell him you would like to have some black figs?

A. I did tell him I would like to have some black figs, because there was hundreds of them there, and I told him I would like to have some.

Q. You think all of the troubles you are suffering from now came from this fall from this ladder?

A. It certainly did.

Q. Did you ever have any of those troubles before?

A. No, sir; let me tell you something,—

Q. That is all right—you just answer the questions—I don't want to get into an argument. You didn't have any of these troubles before, that you are suffering from now?     A. No, sir.

(Testimony of David J. Gover.)

Q. Did you ever have any injury before that caused you any trouble?     A. I had a broken leg.

Q. How did that occur?

A. A lumber pile fell against me.

Q. Isn't it a fact that you told Mr. Patching shortly after the 19th of April last that you had had, a very serious accident and had been all smashed up?

A. Why, no.

Q. You didn't tell him that?

A. I had my leg smashed.

Q. Do you know Mr. Carl Peterson?

A. I know Charley Peterson.

Q. From the hatchery?     A. Yes, sir.

Q. Did you tell Mr. Peterson before this fall on the 19th of April that you had been badly smashed up in a runaway accident?

A. No; I never had a runaway.

Q. You didn't tell him that?     A. No.

Q. You didn't talk to Mr. Peterson about an accident at all?

A. No; I never had no runaway. [47]

Q. Never had any accident?

A. Not no runaway—nothing but this leg.

Q. That was the only accident you ever had?

A. For 35 or 40 years.

Q. And you say you were prospecting, Mr. Gover, for somewheres around between 40 and 50 years?

A. In the '70's I commenced prospecting some—of course, I didn't follow it steady all the time—I worked at it a while—I was in the butcher business for a while.

(Testimony of David J. Gover.)

Q. You said you had been up and down this ladder a number of times before you fell?

A. I couldn't say just how many times that I had been up and down.

Q. You had been up and down there about six or seven times, hadn't you—something around there?

A. I don't think so,—I don't remember, but I don't think so.

Q. You are not sure about that?

A. Well, I don't think so,—I am not positive, don't think so, though.

Q. And you didn't tell Mr. Peterson that a horse ran away with you, and that you had had trouble—

A. No, sir, positively I did not.

Q. And you had not noticed any defect in the ladder? A. No, sir, I did not.

Q. The sawmill was not running? A. No, sir.

Q. Had not been running for some time?

A. I don't know just how long.

Q. This flume you were tearing down was an old structure, wasn't it, Mr. Gover,—been there for some time?

A. Yes, sir; been there for some time—I don't know how long.

Q. The water-wheel that was in the end of what you call the water-house was pretty old, wasn't it?

A. The wheel-house?

Q. Yes, the wheel-house. [48]

A. Well, I don't know when,—I didn't look at the wheel—I seen it in there.

Q. Hadn't been used for a long time?

(Testimony of David J. Gover.)

A. I couldn't tell you how long.

Q. You never saw it used?

A. No, I never saw it used.

Q. Now, when you came here to Ketchikan to see a doctor,—do you know whether or not the company has any doctor?     A. The company?

Q. Yes.     A. They sent me to Dr. Ellis.

Q. They sent you to Dr. Ellis?     A. Yes, sir.

Q. They have no doctor, have they, of their own,—no regularly employed physician?

A. That is what he said he was.

Q. Do you know who paid Dr. Ellis?

A. The company.

Q. They paid your expenses here?

A. That is what they said they would do. Of course I paid my own expenses after he told me he wouldn't do anything more.

Q. Did Mr. Fred Heckman tell you that he would not do anything more for you?     A. Yes, sir.

Q. When?

A. At the hotel there, he said, "We won't do any more"; and the clerk also said he said he wouldn't pay—

Q. Just a minute. What do you mean by not doing anything more,—anything in addition to what he was doing, or did he say he wouldn't continue what he was already doing?     A. Going to quit.

Q. He said he was going to quit?     A. Yes, sir.

Q. Going to stop right there? [49]

A. Yes, sir.

Q. Without any further treatment?



(Testimony of David J. Gover.)

A. Yes, sir.

Q. That is what he said?

A. That is what I recall.

Q. Do you recall his words?

A. He said, "If the doctor said it was all right, I would keep you here"; he said, "I have to go by what he says."

Q. He said he would keep you there?

A. Yes, sir, if the doctor said so.

Q. He didn't tell you he was going to discontinue the treatments?

A. Yes, sir, he did, because he said the doctor said there wasn't anything the matter with me.

Q. Oh, I see; he said he was going according to the doctor's recommendation?

A. Yes, sir; he said he had to go by that.

Q. That he wasn't going to do anything more for you. What was it he wanted you to sign?

A. I don't know. He said, "If we send you down home," he said, "if you will sign up, it is all right."

Q. Sign what,—the pay-roll, or what?

A. I guess so; I don't know.

Q. You did sign the pay-roll, didn't you?

A. Why, when I got a check I would sign.

Q. You signed it when you got your last wages from the company, didn't you?

A. Yes, I signed when I got the wages.

Q. Now, as a matter of fact, Mr. Heckman never told you he would not do anything more for you, did he?

A. He certainly did.

Q. Didn't he tell you in the hotel there that he was



(Testimony of David J. Gover.)

willing to do all he could for you,—tell you the company was willing to do whatever they could for you?

A. He said if the doctor said so they would. [50]

Q. He said the company would do all they could for you, didn't he? A. If the doctor said so.

Mr. FAULKNER.—That is all.

Redirect Examination.

(By Mr. ZIEGLER.)

Q. You say Mr. Heckman said that he would do something for you if the doctor said it would be all right?

A. Keep me there as long as the doctor said so.

Q. Did he tell you the doctor said that there was nothing wrong with you? A. Yes, sir.

Q. Did he tell them in the hotel that he would not pay for your room any more? A. Yes, sir.

Q. Did the clerk tell you that?

A. Yes, sir; and what is the man's name who has the hotel now—the head man?

Q. Ferris.

A. Yes, sir; Mr. Ferris told me twice; yes, sir.

Q. And Mr. Heckman did tell you if you would sign up that he would pay your way down below?

A. Yes, sir.

Q. Down home? A. Yes, sir.

Q. Pay your way out of the country?

A. He would pay my way down home, he said.

Q. If you would sign up? A. Yes, sir.

Q. Did you understand what he meant by signing up?

A. I thought I did,—he made it pretty plain.

(Testimony of David J. Gover.)

Q. What did you understand he meant?

A. If I would sign I wouldn't come back on the company in any way, he would send me out of the country.

Q. If you would sign a release for all damages against the company he would pay your way out?

[51] A. Yes, sir; he didn't say damages.

Q. That is what you understood? A. Yes, sir.

Q. With reference to that ladder, Mr. Gover, had you ever been up that ladder prior to that time?

A. I think one time.

Q. And on this day that you were injured, how many planks had you taken down the ladder?

A. Well, now, I couldn't say,—I couldn't say because I was hustling along to try to get the planks down. I think I must have had as many as three.

Q. What is your best estimate?

A. About three; I think maybe I was on the third one—I am not positive.

Q. You would not be positive? A. No, I ain't.

Q. Now, Mr. Faulkner has asked you about the various troubles you had before you were injured.

A. Yes, sir.

Q. Now, Mr. Gover, state the condition of your health generally before you were injured.

A. Well, now, I could say something like this: My nephew and me went up from Haines,—we went out into the Rainy Hollow country, and we prospected around there, and when we started in we had, I suppose, close to 50-pound packs—we had something like 45 or 50-pound packs, and he wanted to get in

(Testimony of David J. Gover.)

to get that boat that was coming,—there was a man came in the day before, Mr. Smith, and he said, “There is a boat coming in to-morrow,” and my nephew said, “I would like to go out on that”; and I said, “All right; I will go down and go back to Hyder”—I was aiming to go to Hyder, so we came in and the last part of that trip I walked 4 miles an hour and carried that pack. [52]

Q. Four miles an hour?      A. Yes, sir.

Q. For how many miles?

A. From up there at Wells,—if you know where Haines is.

Q. How far was that up?

A. Anywhere from 16 to 20 miles—maybe a little over 20 miles.

Q. You walked that and carried your pack at the rate of four miles an hour?      A. Yes, sir.

Q. Could you do those things right along at that time?      A. Yes, I certainly could at that time.

Q. And that was about a year and a half ago, just shortly before you went to work at Loring?

A. It was in June.

Q. June of 1919?      A. Yes, sir.

Q. That was not quite a year before you were hurt?

A. Yes, sir.

Q. You were accustomed to doing that kind of work, and could do it?

A. Yes, sir—I had been out in eastern Oregon.

Q. And your health at that time, and up to the time of the injury, was practically the same?

A. It was good. I felt good the day I was hurt.

(Testimony of David J. Gover.)

Q. Now, Mr. Faulkner asked you if you saw any bruises on your back and I don't recall what your answer was, but you couldn't see the bruises on your back very well, could you?

A. Only by using two glasses.

Q. By looking in the looking-glass?

A. Two glasses.

Q. And you noticed them there?      A. Yes, sir.

Q. Is there a bruise or red spot right near the center of your spine at the present time?

A. I think so,—I haven't looked, but I think there is. [53]

Q. Now, with reference to this wheel-house, Mr. Gover, you say that wheel-house was used in connection with running the sawmill?      A. Yes, sir.

Q. It wasn't in use at this particular time?

A. No, sir.

Q. But that had been its function?      A. Yes, sir.

Q. A part of the sawmill?

A. That is the general supposition,—I don't know what else it would be for.

Q. Mr. Gover, your instructions were not to tear down any portion of this flume with the exception of the slant—what you call the over-shot?

A. That was all, and some extra top boards down to keep the water from splashing out, they wouldn't need any more. Mr. Patching said, "Take those off and make wood"—

Q. You were not instructed to take down any portion of the flume, were you, right above the ladder?

A. Oh, no.

(Testimony of David J. Gover.)

Q. Do you know whether or not that flume had been used while you were there, Mr. Gover?

A. I saw it being used.

Q. You saw it being used?      A. Yes, sir.

Q. State whether or not you saw them hauling logs up along that tram about which Mr. Faulkner asked you.      A. Yes, sir; I saw them hauling logs up.

Q. You saw them hauling logs up for the sawmill?

A. Yes, sir.

Q. How were the logs hauled up there?

A. By what you call a bull-wheel, I guess.

Q. They were hauled up by a bull-wheel?

A. Yes, sir. [54]

Q. Run by machinery to haul the logs up?

A. Yes, sir.

Mr. ZIEGLER.—That is all.

Recross-examination.

(By Mr. FAULKNER.)

Q. That was not running at the time you were injured, Mr. Gover?      A. No, sir.

Q. Had not been for some time?

A. I don't know just how long,—they either used it a little before or a little while after I was injured. They were sawing up a big log on it there,—I think it was after.

Q. You think it was after?      A. I think so.

Q. It had not been used that winter, as a matter of fact, had it—the sawmill?

A. I don't think it had.

Q. They don't use it in the winter, do they?

A. Oh, I think so, sometimes.

(Testimony of David J. Gover.)

Q. But it had not been used that winter?

A. Well, I am not positive,—when they want some lumber they saw it.

Q. All you ever saw in this flume was water?

A. Just water; yes, sir.

Q. You never did see the wheel running?

A. Oh, no; not that wheel, no, sir.

Mr. FAULKNER.—That is all.

Q. (By Mr. ZIEGLER.) That is what the flume was for, wasn't it, Mr. Gover, to carry water?

A. Yes, sir.

The COURT.—How old are you, Mr. Gover?

A. I am 69—I was born in '51.

Q. (By Mr. FAULKNER.) You were born in '51?     A. '51.

Mr. FAULKNER.—That is all.

(Witness excused.) [55]

### **Testimony of Dr. John H. Mustard, for Plaintiff.**

DOCTOR JOHN H. MUSTARD, introduced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### **Direct Examination.**

(By Mr. ZIEGLER.)

Q. State your name, Doctor.

A. John H. Mustard.

Q. You are a practicing physician in Ketchikan?

A. Yes, sir.

Q. How long have you been a practicing physician?

A. Since 1901.

Q. From which school did you graduate?



(Testimony of Doctor John H. Mustard.)

A. Rush Medical College, Chicago.

Q. What has been the nature of your practice, Doctor?

A. I practiced—after I graduated from the Rush Medical College, I spent three and a half years in the hospital before I got out into private practice, where my practice would be of such a nature as you will find in general hospitals; later on I went to Nome, where I practiced—just such a practice as I have in Ketchikan, perhaps, except that possibly there were a larger percentage of accident cases.

Q. And you had some experience there with accidents? A. Yes, sir.

Q. Fractures, etc.?

A. Yes. I was in the army for nearly 20 months when discharged, and for some months before that had been inspector of the Base Hospital at Camp Lewis, Washington.

Q. And as such did you have any experience with fractures, breaks, and things like that?

A. Yes, sir, very much.

Q. Now, Doctor, do you know Mr. Gover?

A. Yes, sir.

Q. The old gentleman sitting there?

A. Yes, sir. [56]

Q. Do you recall when he first came to your office?

A. On or about the first of July of this year.

Q. Did you make an examination of his person at that time? A. Yes, sir.

Q. A thorough examination? A. Yes, sir.

Q. Did you make any notes of what you found?

(Testimony of Doctor John H. Mustard.)

A. Yes, sir.

Q. With reference to his condition?      A. Yes, sir.

Q. Will you explain that to the jury, what you found?

A. At the time that I made the examination there was a reddish area, looking like a recent contusion, over what is known as the left sacral joint—that is right to the left of the spinal column on a level with the sacrum; there was a point of considerable tenderness on the spinal column between the 11th and 12th dorsal vertebrae. He complained of a great deal of pain in the back, and also in the legs. There was tenderness on pressure over the back and also the hips. The reflexes at that time were a trifle exaggerated—the reflexes in the lower extremity.

Q. That was during April?

A. That was during April; yes, sir.

Q. By the reflexes, what do you mean, Doctor?

A. For instance, supposing a man's leg is at rest, if you hit him on the knee at about this place the normal individual or leg will jump up like that. That is known as the patellar reflex, or the knee jerk. Other tendons or muscles at other points will respond similarly to a slight blow. In his case, at the time I examined him in July they were somewhat exaggerated—they responded more quickly than you would expect them to do in a normal individual.

Q. Did you examine him subsequent to that time?

A. Yes, sir; after he returned to Ketchikan in November he came [57] up to see me, along about

(Testimony of Doctor John H. Mustard.)

the middle of November, when I examined him again, and have since then.

Q. You have examined him since?      A. Yes, sir.

Q. What do you find his condition is to-day, Doctor—at the present time?

A. At the present time that contusion, bruise, which I spoke of is still marked by a round brownish pigmented area the size of, perhaps, a dollar. The tenderness between the 11th and 12th dorsal vertebrae is still quite marked. The large muscles of the buttocks on the right side, the gluteus muscles are very, very much wasted, shrunk, destroyed, so that it does not require any medical—

Q. Is that apparent to the ordinary eye?

A. It is apparent to any ordinary eye.

Q. What could have caused that condition, Doctor?

A. Interference with the nerve supply of the muscle, interfering with its nutrition.

Q. Would the tenderness you discovered in the region of the spine indicate that there could have been an injury to the nerves in the spine that control that muscle?

A. Yes, sir; an injury to the spinal cord.

Q. What else do you find at the present time?

A. At the present time, from the lower portion of the lumbar region of the back, from that on down posteriorly there is altered sensation. The skin is sensitive to touch but it is insensitive to pain; it is also insensitive to differences in temperature. He couldn't tell whether an object that you touched him with is hot or cold. I could burn him in most of the

(Testimony of Doctor John H. Mustard.)

portions of that skin and he wouldn't know it.

Q. Have you made those tests?      A. Yes, sir.

Q. Are you prepared to make them now?

A. Yes, sir. [58]

Q. If necessary?      A. Yes, sir.

Q. What else did you find?

A. The reflexes which in July were exaggerated are now absent altogether. There is no knee reflex; there is no reflex of the tendon of Achilles, or the plantar reflex—you know how ticklish you are if somebody rubs you along the sole of the foot—that is entirely gone in both feet—no response to it at all. The penial reflex is absent.

Q. What would you say, Doctor, in your opinion, would be the cause of that condition to-day?

A. A lesion of the spinal cord producing degenerative changes in it.

Q. What would you say with reference to the prospects of improvement in that condition?

A. I consider them practically null.

Q. Practically no chance?

A. I do not think there is any chance myself.

Q. Now, Doctor, if the patient has no control over the bladder and the bowels, would an injury such as he has testified to, where he fell approximately 25 feet striking on his back, cause that condition—would it be possible to cause that condition?

A. There is a center in the spinal cord below, in the sacral region of the spinal cord, where the spinal cord control of the bladder and bowels is located, and an accident to that would cause very serious

(Testimony of Doctor John H. Mustard.)

conditions in the control of the bladder and bowel movements.

Q. Supposing a man had been in normal health and received an injury such as I have described, what, in your opinion, would be the cause of the condition of the bowels and bladder now?

A. In this case, an injury to the spinal cord.

Q. What would you say, Doctor, with reference to the permanency of this condition now? [59]

A. It looks to me as if it is permanent.

Q. The degenerative condition you have testified to you say is now permanent?

A. It looks that way to me.

Q. Now, I will ask you, Doctor, if any of the symptoms that you have detected in this patient would indicate that he was suffering with rheumatism?

A. The only symptom that would go with rheumatism would be the pain in the back, which he complains a great deal of. Of course that would go with rheumatism—with lumbago.

Q. That, however, would not affect the nerves—the degenerative condition of the nerves to which you have testified?

A. Oh, no; rheumatism would not produce degeneration of the nerves and muscles.

Q. Would you say, with reference to the reflexes, to which you have testified, that the patient was suffering from rheumatism?

A. The reflexes would be exaggerated if affected at all.



(Testimony of Doctor John H. Mustard.)

Q. The fact that the patient shows now no reflexes at all, what would be your opinion as to whether or not he was suffering with rheumatism?

A. It is not due to rheumatism.

Q. You are prepared to state that positively?

A. Yes, sir.

Q. And you stated that you are ready to make those tests to demonstrate the degenerative condition you have testified to? A. Yes, sir.

Q. You have made those tests? A. Yes, sir.

Q. When did you make them last?

A. Two days ago, I think.

Q. And you observed those things at that time?

A. Yes, sir; and at other times.

Mr. ZIEGLER.—That is all. [60]

Cross-examination.

(By Mr. FAULKNER.)

Q. Doctor, did you ever examine Mr. Gover before last July? A. No, sir.

Q. Never saw him before that?

A. I never saw him until—I have to qualify that. I had seen him on the street going around on crutches for some weeks before that, but I did not know who he was.

Q. Never made an examination of him?

A. No, sir.

Q. Now, Doctor, you spoke about a lesion of the spinal cord. Will you please explain to the jury fully what you mean?

A. Some altered—the word lesion would simply mean some condition altered from the normal condi-



(Testimony of Doctor John H. Mustard.)

tion in the spinal cord. We refer to it pathologically as a lesion—it simply means an abnormal pathological condition.

Q. Wouldn't a lesion of the spinal cord be caused by some injury at the point of the lesion, or near the point of the lesion? A. Not necessarily.

Q. Then I don't think the jury understands just what you mean by lesion. Does it mean an injury—if you hit a man in the eye and gave him a black eye, that would be a lesion of the eye?

A. The spinal cord is the largest nerve trunk in the body. It is composed—the great bulk of it is composed of nerve fibers, the nerve fiber being an essential—a very important element of the nerve cell. A nerve cell in one of the roots of the spinal cord will affect a nerve fiber clear down in any part of the extremity—down in the leg here. It is just similar to the telephone wires. The telephone wires come from all parts of the town, are united in a cable and then go on up to central in some place. The cable in this case might be represented as the spinal cord; the individual wires are the nerves that supply individual portions of the body. Now, if we have a cable with a hundred wires going through it, [61] suppose I separate one of those wires, the telephone at the other end of that wire is not going to ring—it is not going to act right; and that is just exactly what has happened in the spinal cord in this instance. The spinal cord has become injured, and some of these wires have become injured so that they are not

(Testimony of Doctor John H. Mustard.)

responding to the muscles that are supplied by these nerves—do not get the proper nutrition; as, for instance, the large muscle in the right buttocks is not getting nourished and it is shrinking away. The nerves which carry the sensation of heat and cold, differences in temperature, have been interfered with in this cable and the sensation does not come up to the brain and register it.

Q. The injury, if there was one in this class, was at the sacral lumbar joint, you say?

A. No, sir; I am glad you brought out this question because if I made myself understood that way I was misunderstood. The outward evidences of an injury at that time was this contusion over the sacral iliac joint. I would not say there were injuries any other place, or were not, but there were no outward evidences of any to the sight.

Q. Will you tell us what you call a contusion, Doctor?     A. A bruise.

Q. Could you tell how long it had been there?

A. Oh, it was a matter of some weeks when he came to me first.

Q. I say, could you tell by looking at the bruise itself—a man comes to you with a reddish brown spot such as you have described—could you tell just about when that was inflicted?

A. You could tell pretty well, approximately.

Q. The spinal cord is pretty well protected, isn't it, Doctor?     A. Yes, sir.

Q. It is protected by what?

(Testimony of Doctor John H. Mustard.)

A. By the bony canal known as the vertebrae, and the spine.

Q. The spinous process?

A. Yes—it is enclosed in a bony case, which we call the spine; [62] in addition to that it is also enclosed with coverings, with a layer of flesh in between.

Q. In fact, it is very well protected?

A. It is; yes, sir.

Q. In any injury to the spinal cord by an external force you would have to apply considerable force, wouldn't you, Doctor?

A. There would have to be a considerable amount of force; yes.

Q. And in applying sufficient force to injure the spinal cord what would be likely to happen to the bones and the protections of the cord?

A. There might be nothing.

Q. There might be nothing?

A. There might be nothing.

Q. Wouldn't it, as a matter of fact, be almost impossible to inflict very much of an injury to the spinal cord without injuring or breaking some bone?

A. Oh, no; the history of accident doesn't show that at all.

Q. You could injure the cord without hurting the bones at all?      A. Yes, sir.

Q. Now, Doctor, if a man falls a distance of 20 or 25 feet, falls on his back and left hip, what would be likely to happen to him?

A. Well, he would be pretty severely shocked, I

(Testimony of Doctor John H. Mustard.)

would imagine—I would not care to demonstrate it.

Q. Would it be possible for a man to get a fall of that kind—not only fall down 25 feet but be thrown out about 4 feet, and fall, striking a tram-way, without breaking some bone?

A. There are very curious things that will happen.

Q. I mean, if he falls on his side and back, would it be possible he could fall that distance without breaking a bone—a man 69 years old?

A. After seeing many accidents, I think there is no telling.

Q. You think they could fall and not break a bone?

A. I took care of a man who fell 12 stories one time. [63]

Q. Did he fall on his side and back?

A. He fell on the pavement—that is what he fell on.

Q. You didn't see this man fall, did you?

A. No; but the policeman who brought him to me did.

Q. We are getting outside of the case. Wouldn't it be a very rare instance that a man would fall 20 or 25 feet, a man 69 years old—

Mr. ZIEGLER.—If the Court please, I am going to object to this question—it is not cross-examination.

The COURT.—I think it is. It is in direct line with the possibilities of the accident.

Q. Wouldn't it be a very rare instance where a

(Testimony of Doctor John H. Mustard.)

man 69 years old would fall that distance and in that position, on his hip and back, and not break something?

A. If I were betting I would bet the other way.

Q. Did you observe any fractures?      A. No.

Q. In the sacral region?      A. No.

Q. Or the vertebrae or any of the bones?

A. No, sir.

Q. Doctor, you spoke about lumbago—in what region of the back does the pain come, from lumbago?

A. In the so-called lumbar region of the back—that is where it comes; it affects the small of the back—the large muscles there become acutely or chronically inflamed.

Q. Has it anything to do with the iliosacral joint?

A. No.

Q. Lumbago?      A. No.

Q. Nothing to do with that at all?      A. No.

Q. Is it in that region?

A. The large muscles of the back go down and are attached to the [64] sacral bone—the upper edge or margin of the sacral bone.

Q. And the sacral bone and two or three other bones form what is called the pelvis, don't they?

A. Yes.

Q. Did you observe any injury to the pelvis in this man?      A. No, sir.

Q. Now, Doctor, you have had a good deal of experience in damage suits, have you?      A. Some.

Q. As a witness?      A. Some.



(Testimony of Doctor John H. Mustard.)

Q. Now, you have had experience in cases where men complained of loss of sensation?

A. Yes, sir.

Q. And told you they had lost their sensations?

A. Yes, sir.

Q. Would you say it is not possible to feign that to some extent?

A. Evidently it is possible—I have known cases that feigned it.

Q. And particularly in cases where there was a lawsuit pending—does that sometimes happen?

A. Sometimes. I believe the literature is somewhat clouded with cases like that.

Q. Now, Doctor, I am going back to ask you this question: If a man has complaints such as Gover told you of, and has a lawsuit in contemplation or pending, wouldn't it be possible for him to get into a mental attitude which would make him, to some extent, at least, have those complaints—just simply from the mental attitude?

A. Answering yes or no, the mental attitude might have something to do with it, certainly.

Q. Will you explain to the jury, Doctor, the meaning of the word "psychosis," briefly?

A. In an abnormal mental state.

Q. Have you ever heard of an affection called litigation psychosis? [65]

A. I presume there might be such a thing.

Q. What would that be, Doctor?

A. I don't know whether that would be a mania



(Testimony of Doctor John H. Mustard.)

for litigation, or just a predilection in favor of litigation.

Q. Wouldn't it be a condition that was aggravated, or a mental condition produced by having become engaged in a suit for damages?     A. Yes.

Mr. FAULKNER.—That is all.

Redirect Examination.

(By Mr. ZIEGLER.)

Q. Now, Mr. Faulkner has asked you a lot of technical questions. From your observation of this patient what would you say with reference to his condition now, whether he is feigning that condition or whether he is sincere?

A. There is absolutely no feigning in this case at all.

Q. You are positive of that?

A. I can demonstrate it.

Q. Will you come down here and demonstrate what you mean by the absence of the reflexes of the patient?     A. Yes, sir.

Mr. FAULKNER.—I do not think that is necessary, if the Court please.

Mr. ZIEGLER.—Well, now, if the Court please, there is a lot of talk here about feigning this condition and the other condition, and I think it is only fair to the jury that this demonstration be made.

The COURT.—Mr. Ziegler, counsel has not accused your patient of feigning anything.

Mr. ZIEGLER.—I understand that, if the Court please, but by inference and insinuation, at least, he has.

(Testimony of Doctor John H. Mustard.)

The COURT.—When, from the witness-stand, he puts in any testimony that your client is feigning, then is the time to rebut it.

Mr. ZIEGLER.—All right, your Honor—with that understanding we won't insist on a demonstration. [66]

Q. Now, Doctor, a man falling this distance of 25 feet, if he struck on his back, or on the most fleshy part back here, there would not likely be any fractures of the bone—this is what I am getting at, he could fall without getting a fracture, or he could fall and might have several fractures?

A. Yes, sir.

Q. Especially if he fell on the buttocks?

A. That is where the padding is heaviest; yes.

Mr. ZIEGLER.—That is all.

(Witness excused.)

Mr. ZIEGLER.—That is our case, your Honor.

Mr. FAULKNER.—I want to make a motion, if the Court please.

Mr. ZIEGLER.—I think the jury, then, should be excused, your Honor.

(Whereupon the jury retired from the courtroom.)

Mr. FAULKNER.—If the Court please, the defendant now moves the Court to dismiss this case and grant a nonsuit, for the reason that the plaintiff has not established that the defendant was in any particular negligent, or that the accident, if any accident occurred, occurred through any act of the defendant that would make it liable in any degree

(Testimony of Doctor John H. Mustard.)

to him for damages. The action is brought under the Employer's Liability Act; the complainant states a cause of action under that act, which, as the Court knows, provides for the payment of compensation to employees who are injured by means of any defect in the machinery, appliances and works of any employer who is carrying on business by those means.

(Whereupon, after argument by counsel, the motion was, by the Court, taken under advisement, and court adjourned until 10 o'clock of the following morning.)

#### MORNING SESSION.

December 3, 1920, 10 A. M.

(The jury is present in the jury-box.)

Mr. ZIEGLER.—If the Court please, I would like to withdraw my rest and recall Mr. Gover for a few questions.

The COURT.—Very well. [67]

#### **Testimony of David J. Gover, in His Own Behalf (Recalled).**

DAVID J. GOVER, the plaintiff herein, upon being recalled as a witness in his own behalf, having been previously duly sworn, testified as follows:

#### Direct Examination.

(By Mr. ZIEGLER.)

Q. Now, Mr. Gover, had the defendant, its superintendent and foreman, exercised ordinary and reasonable care in making a thorough and careful inspection of the ladder from which you fell, and had

(Testimony of David J. Gover.)

such inspection been made prior to the time you were injured, could the defect in said ladder, which caused you to fall, have been discovered?

Mr. FAULKNER.—I object to that as calling for a conclusion.

The COURT.—I think it does call for a conclusion. Let him describe the details—it is for the jury to say.

Mr. ZIEGLER.—All right, your Honor.

Q. Mr. Gover, did the defendant make an inspection of this ladder before you fell?     A. No, sir.

Q. In your opinion how old was the ladder from which you fell?     A. About 20 years.

Q. Did you know the age of the ladder when you went to work there?     A. No, sir.

Q. You didn't know the age of it?

A. I didn't; no, sir.

Q. Now, what kind of lumber was this ladder constructed of?     A. Native lumber.

Q. That is, Alaska lumber?     A. Yes, sir.

Q. Now, assuming that the ladder from which you fell had been standing there exposed to the elements for approximately 20 years, state whether or not decay would likely set in.

Mr. FAULKNER.—I object to that as incompetent, irrelevant and immaterial, and the witness is not qualified to answer.

The COURT.—No foundation has been laid for the witness to answer that question. [68]

Q. Now, Mr. Gover, did the defendant know how old this ladder was?     A. Yes, sir.

(Testimony of David J. Gover.)

Q. What kind of an examination of the ladder did you make when you went to work on it?

A. Just the usual examination like I would any other works.

Q. Did you think the ladder was safe at that time?     A. Yes, sir.

Q. Why did you think it was safe?

A. Well, I didn't think the superintendent would send me up there unless he made an inspection.

Q. Now, Mr. Gover, describe that defect in the ladder as you later on saw the defect in the rung.

A. It was in the top of the upright, where it was nailed in—it was rotten in there.

Q. (By Mr. FAULKNER.) What was rotten?

A. Those uprights where the nails went through and held the cleat.

Q. (By Mr. FAULKNER.) What was rotten?

A. Those uprights.

Q. Now, Mr. Gover, I will ask you the question again—if the defendant and its foreman had exercised ordinary and reasonable care in causing a thorough and careful inspection to be made, could they have discovered that defect?

Mr. FAULKNER.—I object to that.

Mr. ZIEGLER.—On the authority of the case we submitted to your Honor, in the 206 Federal, I think that that question is competent. The same form of question was asked in that case.

The COURT.—In that case it does not appear to have been objected to by anybody. It does not appear, from an examination of that case, whether the



(Testimony of David J. Gover.)

witness was an expert or whether he was not an expert, but here the question is objected to.

Mr. ZIEGLER.—I want to raise the issue, if the Court please—I want to get that question before the jury, as to whether or not the defendant could have detected this had they made an inspection. That is the only way we can prove negligence on the part of the defendant. [69]

The COURT.—If that is your idea, have the man describe the defect, which he has done, and then put somebody on the stand who knows something about wood. It may be that this man can qualify—I do not know anything about that—but he has not qualified yet.

Q. Mr. Gover, you have had—

Mr. FAULKNER.—Now, just a minute. I object to the leading questions.

Q. State whether or not you have had some experience with timber. A. Well, some; yes.

Q. Do you think you would be able to tell whether a piece of timber—whether a defect of that kind in a piece of timber could be discovered by a proper and special examination? A. Yes, sir.

Q. Now, then, I will repeat the question. Had the defendant made a special examination of this ladder, and exercised ordinary and reasonable care, could they have discovered the defect in the ladder?

A. Yes, sir.

Mr. FAULKNER.—I object to the question on the same ground—the witness is not qualified.

The COURT.—The use of the words “ordinary



(Testimony of David J. Gover.)

and reasonable care'' makes that question objectionable.

Mr. ZIEGLER.—I will leave that out and make it a special examination.

The COURT.—Now, repeat your question.

Q. Mr. Gover, had the defendant in this case, its superintendent or foreman, made a special examination of this ladder, or caused an inspection to be made, could they have discovered this defect?

A. Yes, sir.

Mr. FAULKNER.—I object to that question. The witness has already testified that he fell from this ladder a distance of 25 feet [70] and that he has never been able to walk since; and now he is testifying about some defect that was 25 feet up.

The COURT.—That would go to the weight of the evidence. What are you basing your question on?

Mr. ZIEGLER.—I am basing it on what he has partially observed since that time.

The COURT.—Since that time?

Mr. ZIEGLER.—Yes, your Honor. I will ask him this question.

Q. Did you see this ladder any time after you were injured? A. Yes, sir.

Q. How long afterwards?

A. Well, just as soon as I was able to go out on my crutches.

Q. About how long would that be?

A. Probably a month,—four weeks or a month.

Q. Might have been, then, two, three, or four months? A. Yes.

(Testimony of David J. Gover.)

The COURT.—After the accident?

Mr. ZIEGLER.—After the accident, your Honor.

The COURT.—Let him describe what he saw then.

Q. What did you see then?

A. I saw that the top was rotten.

Q. You saw that the top was decayed?

A. Yes, sir.

Q. Now, I will repeat the question,—if the defendant in this case, its superintendent or foreman, had made a special examination of this ladder, or caused an inspection to be made, could they have discovered this defect?

Mr. FAULKNER.—The same objection,—the witness is not qualified—no foundation laid.

The COURT.—I think his testimony is admissible. The weight of it, of course, depends on what you can make out of it on cross-examination,—what he knows. It is admissible for what it is worth.

Mr. ZIEGLER.—Answer the question, Mr. Gover.  
[71]

The WITNESS.—What is the question, please?

Q. Had the defendant, its superintendent and foreman, made a special examination of this ladder prior to the time you fell, and caused it to be inspected, could they have discovered this defect in the ladder?

A. Yes, sir.

Q. They could?      A. Yes, sir.

Q. Now, Mr. Gover, you stated at the time you were directed to go up the ladder you did not know the age of the ladder—is that correct?

A. That is correct—I did not.

(Testimony of David J. Gover.)

Q. Did the superintendent at that time tell you the age of that ladder?     A. No, sir.

Q. He did not tell you?     A. No, sir.

Q. Now, you have stated you have had some experience with timber during your life?

A. Yes, sir.

Q. Are you in a position to state whether or not native spruce, standing for 20 years exposed to the elements, would be likely to decay?

Mr. FAULKNER.—Same objection.

Mr. ZIEGLER.—I am not asking the question. I am asking if he is in a position to state that.

Q. Could you state whether it would be likely to decay?     A. Yes, sir.

Q. Well, now, what would your answer be?

A. My answer would be, exposed to the weather, that it is not a timber that will stand the weather like some other timber—like oak.

Q. State whether or not it would be likely to decay at the end of 20 years. [72]

A. Yes, sir; it would.

Q. Or 15 years?

A. Yes, sir, it might in 15 years. It is not a long lived timber.

Mr. ZIEGLER.—You may cross-examine.

Cross-examination.

(By Mr. FAULKNER.)

Q. Mr. Gover, you said you didn't know the age of that ladder when you went there?     A. No, sir.

Q. How do you know now how old it is?

A. I found out afterwards.

(Testimony of David J. Gover.)

Q. How did you find out?

A. Oh, by several people—they said it was old.

Q. Who was it told you it was 20 years old?

A. Well, I think that was the general talk.

Q. Now, who talked that—who said that? Who said that ladder was 20 years old?

A. I think Mr. Peterson did.

Q. You think Mr. Peterson said it was 20 years old? A. Yes, sir; he was there a long time.

Q. As a matter of fact, you know pretty well that the hatchery hasn't been there 20 years, don't you?

A. No.

Q. You don't know that? A. No, sir.

Q. You think it has been there 20 years?

A. I think so.

Q. You think the ladder had been there 20 years?

Mr. ZIEGLER.—He didn't say the ladder had been there 20 years—he said the timber was 20 years old.

Q. How do you know the timber was 20 years old?

A. Well, just from experience.

Q. You say Peterson told you it was 20 years old?

A. About that old. [73]

Q. When did he tell you that?

A. After I was hurt.

Q. That is Mr. Charles Peterson?

A. Carl Peterson.

Q. He said that timber was 20 years old?

A. He said that was 20 years old, that building.

Q. Where was it that he told you that?

A. In the bunkhouse.

(Testimony of David J. Gover.)

Q. At the hatchery?      A. Yes.

Q. Now, Mr. Gover, you say that you were out there after you were hurt?      A. Yes, sir.

Q. You went back out to the ladder again?

A. Yes, sir.

Q. When was that?

A. As I told you, it was when I was out on my crutches—as soon as I could walk out on my crutches.

Q. Who was there with you?      A. Nobody.

Q. Did you point that rotten place out to anybody?

A. Not that time I didn't, but at the time I was hurt I did.

Q. At the time you fell you pointed that cleat out to Mr. Orton?      A. Yes, sir.

Q. Mr. Orton is here now?      A. Yes, sir.

Q. You say the Alaska Packers or Mr. Patching did not make any inspection of the ladder,—how do you know that?

A. He would have found it if he had.

Q. That is the only knowledge you have of it, is it—of the fact that he did not make an inspection?

A. Couldn't have helped but have found it.

Q. You don't know anything about whether he made an inspection or not, do you? [74]

A. He didn't tell me.

Q. You don't know that?

A. I know he would have found it.

Q. That is simply a conclusion, Mr. Gover, as a matter of fact, in your own mind. You don't know anything about whether he made an inspection or not.

Mr. ZIEGLER.—He stated that he didn't see him



(Testimony of David J. Gover.)

make an inspection, but if he had he would have found the defect.

Q. Do you know anything about it, Mr. Gover, of your own knowledge,—of your own positive knowledge? Do you know anything about an inspection of the ladder? You can answer that yes or no,—you don't have to argue—just answer yes or no, what you know about it.

A. Yes, I know something about it.

Q. What is that? A. Yes.

Q. You know that he did not make an inspection?

A. Yes.

Q. How do you know that?

A. Because he would have found it if he had.

Q. That is the only way you know it?

A. That is one reason.

Q. You had been up and down that ladder seven times, hadn't you? A. I don't know.

Q. You don't know how many times you had been up there? A. No, sir.

Q. How many boards did you take at a time?

A. One board.

Q. Do you remember how many boards there were on the ground?

A. No, sir, I don't remember how many boards there were on the ground.

Q. If there were seven you were up and down seven times?

A. You understand I had taken some boards off that lower flume. I hadn't taken seven off of the upper flume, I don't think. [75]



(Testimony of David J. Gover.)

Q. This defect, you pointed it out to Mr. Orton, did you, in the ladder? A. Yes, sir.

Q. When was that, Mr. Gover? A. When I fell.

Q. I mean the ladder itself, when did you point that out? A. I pointed up to the ladder.

Q. You pointed up to the ladder? A. Yes, sir.

Q. At the same time you fell? A. Yes, sir.

Q. And you showed him the cleat?

A. Yes, sir, I did.

Mr. FAULKNER.—That is all.

Redirect Examination.

(By Mr. ZIEGLER.)

Q. Mr. Gover, you say that you took some boards off down below, from the platform?

A. Down on the lower flume.

Q. You didn't have to climb the ladder to get those boards off? A. No.

Q. So if there were 7 or 8 boards taken down that would not indicate that you had climbed the ladder 7 or 8 times, would it? A. No, sir.

Q. What is your best recollection as to how many times you went up the ladder, and down?

A. Well, I think I had three boards down—I am not positive.

Q. That is your best recollection?

A. Yes, three of those boards—I am not positive.

Q. Now, Mr. Faulkner asked you if you pointed out this rotten place in the upright to anyone?

A. Mr. Orton.

Q. When was that? A. After I fell. [76]

Q. Mr. Orton came there soon after you fell?

(Testimony of David J. Gover.)

A. Yes, sir.

Q. And the rung was lying on the log-way?

A. On the tramway; yes, sir.

Q. How did you happen to come to point that out to him?

A. He said, "How did you come to fall?" And I showed him—"That gave way," I said.

Q. Did you point out the place?

A. Yes, sir, I did; I told him to look up there. I said, "That gave way with me."

Mr. ZIEGLER.—That is all.

Recross-examination.

(By Mr. FAULKNER.)

Q. You said this to whom, Mr. Gover?

A. Mr. Orton.

Q. And who else—anyone else?

A. Mrs. Grant was there but I don't know whether she was right there at that time because she run to get Mr. Patching.

Q. Was Mr. Patching there?

A. He wasn't there,—he hadn't got there yet.

Mr. FAULKNER.—That is all.

(Witness excused.)

PLAINTIFF RESTS.

Mr. FAULKNER.—I renew the motion on the same ground that I made it on last.

(Whereupon court adjourned until 2 o'clock P. M.)

(Testimony of Fred Patching.)

### AFTERNOON SESSION.

December 2, 1920, 2 P. M.

(Jury present in jury-box.)

The COURT.—I think the motion for a nonsuit in this case will have to be denied. I have had the testimony read and I find enough to save the case from a nonsuit.

Mr. FAULKNER.—We ask an exception, if the Court please. [77]

### DEFENSE.

#### Testimony of Fred Patching, for Defendant.

FRED PATCHING, introduced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. FAULKNER.)

Q. Please state your name, Mr. Patching.

A. Fred Patching.

Q. What is your occupation?

A. Superintendent, Loring Hatchery.

Q. How long have you been in charge of the hatchery, Mr. Patching?

A. Since the 27th day of July, 1901.

Q. When was the hatchery constructed?

A. 1901.

Q. 19 years ago?      A. Yes, sir.

Q. Were you superintendent there last April—1920?      A. Yes, sir.

(Testimony of Fred Patching.)

Q. Do you know D. J. Gover, the plaintiff in this case?     A. Yes, sir.

Q. How long have you known him, Mr. Patching?

A. He went to work there, I think, the 6th day of July, 1919, and that was my first acquaintance with Mr. Gover.

Q. How long did he remain there?

A. Until, I think, the 25th day of May, 1920.

Q. Now, Mr. Patching, what work is done at the hatchery? What is the nature of the business of the salmon hatchery?

A. Propagation of the salmon—hatching the eggs.

Q. Hatching salmon eggs?     A. Yes, sir.

Q. How is that done? How are the eggs handled?

A. The fish are caught in the stream, the eggs taken from the fish and fertilized, and they are allowed to remain in the water not less than an hour; they are then carried into the [78] hatchery and placed in baskets in running water, and in eight days the bad eggs, the white eggs, are picked out; they then remain without being disturbed for about 30 or 40 days, according to the temperature of the water; they are then gone over by hand—that is, the white eggs are picked out,—the basket is raised and agitated so that the water from below boils the eggs up and exposes the white eggs to view, and they are picked out until they are all removed from the basket, when they are delivered back into the running water and left there for a period not to exceed a week?

Q. Is any of this work carried on by machinery?

A. No, sir.

(Testimony of Fred Patching.)

Q. Do you carry on any part of the work by machinery?

A. Construction of the buildings, repair—

Q. No, I mean the business of the hatchery.

A. No, sir.

Q. Have you a sawmill at the hatchery, Mr. Patching?     A. Yes, sir.

Q. What kind of a sawmill is it?

A. A little sawmill run by water-power—single saw—small affair.

Q. Was that sawmill operated during last winter?

Mr. ZIEGLER.—Just a moment. If the Court please, I desire to object to that for the reason that it is immaterial whether it was operated last winter.

The COURT.—It may be—I cannot tell yet. If it is immaterial it does not hurt you,—I cannot tell yet.

Q. Was that sawmill operated during last winter, Mr. Patching?     A. Not during the winter.

Q. Up until April 19, 1920?     A. No, sir.

Q. Had not been operated at all?

A. No, sir, not during the winter.

Q. Was it in operation on April 19th?

A. No, sir.

Q. Was any machinery in operation at the plant?  
[79]     A. No, sir.

Mr. ZIEGLER.—The same objection, if the Court please.

The COURT.—The same ruling.

Q. Now, Mr. Patching, did you see D. J. Gover at the hatchery on the 19th of April, 1920?

(Testimony of Fred Patching.)

A. Yes, sir.

Q. What was he doing?

A. In the forenoon he was building a fence.

Q. What was he doing after lunch?

A. In the afternoon he was tearing down an old flume to get some wood to repair this fence.

Q. Tearing down an old flume?      A. Yes, sir.

Q. Who instructed him to do that?      A. I did.

Q. Now, Mr. Patching, how high was this flume from the ground?      A. How high from the—

Q. How high was the top of the flume from the ground?      A. The top?

Q. The top of the flume, yes.

A. Well, the top of the flume would be about 26 feet from the ground.

Q. Now, how was the top of the flume reached?

A. By a ladder.

Q. What kind of a ladder was it, Mr. Patching?

A. A vertical ladder.

Q. What was it made of?

A. The uprights were made of 2x6; the steps were made of 1x4, and the steps were notched in so that they were flush with the outside of the uprights, making them notched in one inch.

Q. That is, they would be set into the side one inch?

A. Yes; they were set into the side, and they were 24 inches long.

Q. What kind of wood was it?

A. Spruce. [80]

Q. How long had that been there on the 19th of April, 1920?      A. About 8 years.



(Testimony of Fred Patching.)

Q. Now, did Mr. Grover go up on top of the flume?

A. He must have.

Q. By means of the ladder?      A. Yes, sir.

Q. Did you go up that day?      A. Yes, sir.

Q. Did you go clear up, from the bottom to the top?      A. Yes, sir.

Q. Did you put your weight on the rungs of the ladder?      A. Yes, sir.

Q. Had you ever been up there before April 19, 1920?      A. Oh, many times.

Q. Did you observe any defect in the ladder at that time?      A. No, sir.

Q. Have you examined the ladder since April 19, 1920?      A. Yes, sir.

Mr. ZIEGLER.—I object to that, unless it is confined right near the time, as being too remote to have any bearing on the case—any examination after the accident.

Q. When was it, Mr. Patching?

A. I examined it the next day.

Q. The next day after April 19th?      A. Yes, sir.

Q. Did you observe any defects in the ladder at that time?      A. No, sir.

Q. And you say before Gover went up to attend to this work you had examined the ladder and gone up?      A. I had gone up the ladder.

Q. Placed your weight on each rung?

A. Had to—that is the only way to get up.

Q. How much do you weigh, Mr. Patching?

A. About 220.

Q. Did you weigh that much at that time? [81]

(Testimony of Fred Patching.)

A. Probably a little more.

Q. Now, I will just ask you, Mr. Patching, if you have taken any photographs of that ladder?

A. Yes, sir.

Q. Have you a photograph here representing the ladder?     A. Yes, sir.

Q. Now, when was that photograph taken, Mr. Patching—about when?

A. About a month or six weeks ago.

Q. Who took it?     A. I took it.

Q. Now, I might ask you this, to go back to the work. When Mr. Gover was instructed to tear down this flume, what was he to do—what were your instructions to him?

A. On the end of the house—it wasn't a house—it was a heavy frame that supported an over-shot and wheel, and on the end of this, like here at the end of the house there was a chute run down to carry the waste water from the flume down into the tailrace below, and I went up to see where he could get the plank handiest to use in the construction of this fence. I told him to take down this chute that carried the water from the top down to the tailrace—the extra water the wheel wouldn't handle.

Q. Was there anything else he was to tear down?

A. No, sir; just to get those boards. We needed those boards to finish up the fence.

Q. Did he take down any boards out of the flume?

A. This was part of the flume.

Q. You have stated that you took this picture, Mr.

(Testimony of Fred Patching.)

Patching. What does that picture represent—represent the ladder?

A. That represents the ladder and the vertical side of this frame that the over-shot wheel was in.

Mr. FAULKNER.—I now offer that picture in evidence as Defendant's Exhibit No. 1.

Mr. ZIEGLER.—No objection, your Honor. [82]

(Whereupon said picture was received in evidence and marked Defendant's Exhibit No. 1.)

Mr. FAULKNER.—There is some writing on the back of this—I don't know whether it ought to be taken off or not. It is a label on the picture. Have you any objection to the writing?

Mr. ZIEGLER.—I never looked at it.

Mr. FAULKNER.—Just simply labels the picture—tells what it is.

Mr. ZIEGLER.—I think he has explained in his testimony. It is not necessary to have that on there. I don't think it will do any harm—leave it on.

Mr. FAULKNER.—All right.

Q. Now, Mr. Patching, I will ask you if you took any other pictures of the ladder that leads up to the top of that flume, at the same time that you took this?

A. I think I took four or five, possibly six the roll was, but I think there was five of them came out all right. One of them was no good.

Q. I hand you another picture and ask you if you took that, and what it represents?

A. This is the third view that I took, and it goes down a little more on the ladder.

(Testimony of Fred Patching.)

Mr. ZIEGLER.—Just a moment—I don't want any testimony concerning it until I have had a chance to examine it. May I ask the witness a question, your Honor?

The COURT.—Yes.

Q. (By Mr. ZIEGLER.) Does this show the entire ladder, Mr. Patching? A. No, sir.

Q. (By Mr. ZIEGLER.) It does not show the entire ladder?

A. No, sir; it is explained on the back of the picture.

Mr. ZIEGLER.—If the Court please, I do not think it is a picture showing all the surroundings, and I don't hardly think it is admissible.

The COURT.—It depends on what it is offered for. [83]

Mr. FAULKNER.—It is offered to show the bottom. The first picture showed the top and we couldn't get it all in one picture. We will introduce the measurements of the ladder so there will not be any question about that.

Mr. ZIEGLER.—I will withdraw any objection, your Honor.

Q. Now, what does that picture represent, Mr. Patching?

A. This represents the ladder. My camera was too small to get all the picture with one view, so I just took the camera and sloped it a little and took the bottom of the ladder. It is really part of this picture.

(Testimony of Fred Patching.)

Mr. ZIEGLER.—That is the first one that is introduced, isn't it?

Mr. FAULKNER.—That is the first one we introduced.

Mr. ZIEGLER.—I would like to ask another question. Mr. Patching, does this show the same condition existing at the time you took the picture that existed on the day that the plaintiff fell?

A. Outside of the ladder being a little older, it is the same condition.

Q. (By Mr. ZIEGLER.) There was no portion of the surrounding structure or timbers removed?

A. No, sir.

Mr. FAULKNER.—Now, I will offer that in evidence as Defendant's Exhibit No. 2.

Mr. ZIEGLER.—All right.

(Whereupon said picture was received in evidence and marked Defendant's Exhibit No. 2.)

Q. (By Mr. FAULKNER.) That shows the bottom of the ladder, you say, Mr. Patching?

A. It is more particularly the bottom and not as high as the top, so it shows the tramway there, which I couldn't get in the other picture.

Q. Now, you said you took some other pictures, Mr. Patching? A. Yes, sir.

Q. I hand you this picture and ask you if you took that? A. Yes, sir. [84]

Q. At the same time you took the picture of the ladder? A. Yes, sir.

Mr. ZIEGLER.—I would like to know if that



(Testimony of Fred Patching.)

shows the same condition as on the day the plaintiff claims he fell.

The WITNESS.—Yes, sir.

Mr. FAULKNER.—I introduce this as Defendant's Exhibit No. 3.

Mr. ZIEGLER.—No objection.

(Whereupon said picture was received in evidence and marked Defendant's Exhibit No. 3.)

Q. (By Mr. FAULKNER.) Now, Mr. Gover, in Defendant's Exhibit No. 3—is that taken from the same place—from the same angle as Defendant's Exhibits 1 and 2? A. No, sir.

Q. What does this Defendant's Exhibit No. 3 represent—what does it show?

A. This shows the end of the structure that contained the wheel, and the other pictures were the side view. The ladder was on the side, and you can see in this picture the end view, where the ladder is coming down, and shows the structure as it was, looking right at the end. The others were taken looking right at the face of the ladder.

Q. In other words, this is a side view of the ladder? A. Yes, sir.

Q. The others were face views? A. Yes, sir.

Q. In this Defendant's Exhibit No. 3, is the tramway mentioned by Mr. Gover shown?

A. Yes, sir.

Q. That is shown in this picture? A. Yes, sir.

Q. And the tramway shown in this picture is the tramway which he described as being at the bottom of the ladder, yesterday? A. Yes, sir.



(Testimony of Fred Patching.)

Q. Now, Mr. Patching, have you taken any measurements of that [85] ladder and the surrounding structures there?     A. Yes, sir.

Q. In the first place, you heard Mr. Gover testify yesterday that there was a distance of about 6 feet, I think—from 4 to 6 feet, from the ladder to the end of the flume on the top?

A. I didn't understand that question.

Q. From where the ladder was fastened on the flume, he said there was a distance of from 4 to 6 feet to the end of that flume, where the boards slanted down.

A. There was a distance of about 20 inches.

Q. How long was the ladder, Mr. Patching, from the ground to the top of the flume?

A. Can I read from this?

Q. Yes.

A. Twenty-one feet.

Q. That is a memorandum that you made?

A. Yes, sir.

Q. From the ground to the top of the ladder—

A. From the ground to the top of the ladder?

Q. Yes.

The COURT.—To the top of the flume, you said.

Q. Top of the flume—from the ground to the top of the flume, how high is it?

A. About 23 feet—that is wrong—not from the ground to the top of the flume. From the ground to the top of the flume would be about 26 feet—from the ground to the top of the flume.

Q. What was situated at the bottom of the lad-

(Testimony of Fred Patching.)

der? A. A walk made of three pieces of 4x8.

Q. Where did that walk lead to?

A. To the tramway.

Q. How far was it from that walk, Mr. Patching, to the top of the ladder?

A. From the walk to the top of the ladder, 21 feet.  
[86]

Q. How far was the tramway out from the bottom of the ladder? A. 7 feet and 2 inches.

Q. Now, in Defendant's Exhibit 1 there is a board that extends out—a loose end of a board that extends out from a platform across the face of the ladder; how far was that board from the ground, if you made any measurements?

A. That board is 10 feet from the ground—not from the ground—from the walk.

Q. How far from the top of the ladder to the platform? A. Eleven feet.

Q. Now, on Defendant's Exhibit 2, Mr. Patching, there is a brace that is shown coming down here, extending towards the tramway—how far is that out from the bottom of the ladder, that brace?

A. That brace is parallel with the tramway.

Q. That brace is parallel with the tramway?

A. Yes, sir.

Q. So that is, then, 7 feet?

A. No, it doesn't come quite to the tramway—5 foot—5 foot from the foot of the ladder.

Q. From the bottom of the ladder that is 5 feet. Now, Mr. Patching, after Mr. Gover commenced to work on the flume on the 19th of April, when was the

(Testimony of Fred Patching.)

next time that you saw him?

A. I don't know whether I went out while he was there working or not; I don't remember that, but if I didn't go out while he was working there, the next time I saw him was about half after four.

Q. Where was he then?

A. He was laying down under the tramway.

Q. Under the tramway?      A. Yes, sir.

Q. Was he down below the walk that you said was at the bottom of the ladder?

A. That walk is 3 feet and 7 inches above the ground, and he [87] was lying on the ground under the tramway beyond the walk that came from the ladder to the tramway.

Q. Now, what was he doing, Mr. Patching—just lying on the ground there?

A. Lying there, and Mr. Orton was trying to get him out from under the tramway.

Q. What did you do with him, if anything?

A. Together we picked him up and put him up on the tramway and got upon the tramway ourselves, and took Dave and put him over on the log deck, which is connected with the mill, where we could set him down, and Orton went to get the car to take him to the bunkhouse.

Q. Did you take him to the bunkhouse?

A. Yes, sir; we placed him on the car, and the tramway runs down past the messhouse and the bunkhouse, and he walked into the bunkhouse.

Q. No, Mr. Patching, did you examine him at that time to ascertain whether there were any injuries?

(Testimony of Fred Patching.)

A. We took his clothes off.

Q. Did you make an examination of him?

A. We tried to find out what was the matter with him—if we could do anything to him.

Q. Did you examine to see whether he had any bruises or cuts?     A. Yes, sir.

Q. Did you find any?     A. No, sir.

Q. Did you find any fractures of any bones?

A. No, sir.

Q. How long did he remain at the hatchery after that, Mr. Patching?     A. After the 19th of April?

Q. Yes.

A. I think until about the 25th or 26th of May.

Q. And at the time you found him did he complain to you that he had fallen?

Mr. ZIEGLER.—Just a moment—that is leading. [88]

The COURT.—What did he say about falling, if anything.

Q. (By Mr. FAULKNER.) What did he say, Mr. Patching?

A. What did Gover say about falling?

Q. Yes.

A. I said, “How is it you got hurt?” He said, “I fell from the ladder,” and he said, “I fell from the ladder and struck on my back.”

Q. Did he say where he struck?

A. On the tramway.

Q. And you found him down beneath the tramway?

A. Yes—he had then gone under the tramway.

(Testimony of Fred Patching.)

Q. The tramway was a distance of 7 feet 3 inches from the ladder?     A. 7 feet 3 inches.

Q. You took him in the bunkhouse, Mr. Patching, and you say you discovered no bruises on him?

A. No, sir.

Q. Did you do anything for him during the time he was in the bunkhouse?     A. Yes, sir.

Q. What sort of treatment did you give him, Mr. Patching?     A. What is that?

Q. What did you do for him while he was there?

A. We rubbed him with liniment; and I have an electric lamp that I found very beneficial in bruises, and we put that light on where he complained of pain.

Q. And did he eat his meals there at the bunkhouse ?

A. He didn't eat very much the next day, but after that he picked up and ate.

Q. He ate well?     A. Yes, sir.

Q. Did he complain of constipation?

A. Yes, sir.

Q. What did you do for him?

A. Gave him injections.     [89]

Q. How many times did you do that—about how many times?     A. From six to ten times.

Q. And after that did he have any trouble?

A. We gave him medicine and he was all right.

Q. He had no more trouble with his bowels?

A. No, sir.

Q. Before this injury—before this accident, or before this fall whatever it was, did Mr. Gover com-



(Testimony of Fred Patching.)

plain to you about having constipation?

A. Yes, sir.

Q. What did he say?

A. It was within a few days of the time that he came to work and he came to me and he said,—he asked if he could get some black figs. He says, “I use them and it takes the place of medicine, because I am troubled with constipation.”

Q. Did he say anything to you about coming to Ketchikan?—

Mr. ZIEGLER.—That is leading.

The COURT.—Yes, it is leading in one sense of the word, but it directs his attention to what part of the conversations, or of the thing he wants to bring out, but it is not suggesting to him what he should say in answer to the question.

Q. Did he discuss that with you, Mr. Patching?

The COURT.—What did he say.

Q. Was anything said between you and Gover about him coming to Ketchikan?

The COURT.—And if so, what was it?

A. I repeatedly asked him if he wished to go to Ketchikan.

Q. What did he say?

A. When I asked him the next day, “Why,” he says, “it is foolishness for you to think you can get me out to Ketchikan.” I said, “If you want to go to Ketchikan we will get you there.” Then some time later—oh, probably two weeks afterwards, he said he didn’t see what would be the use of going to



(Testimony of Fred Patching.)

Ketchikan—he thought he was doing as well there as it was possible to do anywhere. [90]

Q. Then you say he came to Ketchikan some time the latter part of May?     A. Yes, sir.

Q. Now, Mr. Patching, at the time that Gover claimed to have fallen from this ladder, did you see the slat from the ladder?     A. Yes, sir.

Q. That was broken off?     A. Yes, sir.

Q. I might ask you this—do those pictures that you have introduced here, Defendant's Exhibits 1, 2 and 3, show the place where this slat came from?

A. Yes, sir.

Q. On the ladder?     A. Yes, sir.

Q. And is the condition, in those pictures, of the ladder the same as it was on the 19th of April?

A. Practically—I don't suppose there would be much change in that time.

Q. Where did you find the rung of the ladder?

A. Laying on the tramway.

Q. That was how long after Gover was taken to the bunkhouse?

A. It was the same evening,—I couldn't say as to how long.

Q. Just explain to the jury, Mr. Patching, where that was found. If you will take this picture and point out to the jury where that rung was found—Defendant's Exhibit 3,—just step down here and point it out to them so they can see it.

A. This is the walk from the ladder over to the tramway—that gray-looking line—that is the walk that leads from the ladder over to the tramway; here

(Testimony of Fred Patching.)

is the ladder—you can see the rungs,—I found this rung about 10 or 12 feet from where this walk strikes the tramway.

Q. Now, Mr. Patching, I hand you here a rung and ask you if that is the rung of the ladder you picked up on the tramway after Gover was taken to the bunkhouse? [91]

Mr. ZIEGLER.—I would like to ask a question, your Honor, before he answers that.

The COURT.—Very well.

Q. (By Mr. ZIEGLER.) Mr. Patching, whose possession has that rung been in since the time you claim you found it? A. In mine.

Q. (By Mr. ZIEGLER.) Where did you have it? A. In my house.

Q. (By Mr. ZIEGLER.) You had it put away in your house? A. Yes, sir.

Q. (By Mr. ZIEGLER.) And when did you pick it up? A. The same evening.

Q. (By Mr. ZIEGLER.) The same evening, you picked the rung up? A. Yes.

Q. (By Mr. FAULKNER.) Now, Mr. Patching, I asked you if that is the rung that you picked up on the tramway? A. Yes, sir.

Q. You say you have had it in your possession ever since?

A. With the exception of from 10 o'clock this morning until 2 o'clock this afternoon, when I put it in the vault in the courthouse.

Q. And is that rung in the same condition that it was the day you picked it up?

(Testimony of Fred Patching.)

A. Except that it is a little older, that is all.

Q. I mean with reference to the nails and general conditions?     A. Yes, sir.

Q. Has it been altered by anyone?

A. No, sir.

Q. Is there any difference in the condition of the nails?

A. These nails here, when I first picked it up you could see the wood that was sticking to it—little flakes of wood—they are still there but they are discolored with the rust,—it looked quite bright.

Q. Will you show the jury just the position that rung occupied [92] when it was on the ladder—when it was in place? Just show them up against the wall there.

A. The rungs in the ladder were set in,—the up-rights were 2x6, and these rungs were set in one inch so that the outside of the rungs was flush with the outside of the up and down piece—that was the main part of the ladder.

Q. Then the three nails that are now protruding through that rung on the right-hand side, they would be the nails on the right-hand upright of the ladder, would they?     A. Yes, sir,—facing the ladder.

Q. And the nails that are broken off would be the nails on the left-hand side?     A. Yes, sir.

Mr. FAULKNER.—I ask to introduce that as Defendant's Exhibit No. 4.

Mr. ZIEGLER.—No objection.

(Whereupon said rung was received in evidence and marked Defendant's Exhibit No. 4.)

(Testimony of Fred Patching.)

Q. Mr. Patching, have you had any experience in construction work, such as the construction of that flume and ladder, in Alaska?     A. Yes, sir.

Q. How much experience have you had up there at the hatchery?

A. I had charge of all the work at the hatchery with the exception of two log houses that were built when I went there—or nearly built at the time I went there.

Q. Were you in charge of the work at the time this flume was constructed?     A. Yes, sir.

Q. You are familiar with the different woods, are you?     A. Yes, sir.

Q. Of Alaska, that are used in the construction of flumes and ladders?     A. Yes, sir.

Q. And with the lasting qualities of the different grades of wood in structures of this nature?

A. Yes, sir. [93]

Q. In your opinion, Mr. Patching, from the experience you have had, how long would you say that a ladder of the nature of the one concerned in this case would last without decay?

A. It should be good for 10 years.

Q. Did you observe any decay about this ladder?

A. No, sir.

Q. Any place?     A. No, sir.

Q. Did you examine the ladder after the 19th of April?     A. Yes, sir.

Mr. ZIEGLER.—Just a minute. I object to that, if the Court please, unless it is confined to that time or close to that time.

(Testimony of Fred Patching.)

Q. How long after the 19th did you examine it?

A. On the 20th.

Q. Did you observe any decay or any defect in the ladder at that time?     A. No, sir.

Q. And you said that you had been up on the ladder since that time?     A. Yes, sir.

Q. I would like to ask you a question that I do not believe you understood, Mr. Patching, and that is the distance of the top of the ladder as shown in Defendant's Exhibit No. 1, from the end of the flume on top.

A. The distance from the top of the ladder to the end,—do you mean—

Q. Is there any space in between the top of the ladder and the end of the flume?

A. About 20 inches.

Q. Is there 20 inches shown in that picture?

A. Yes, there is 20 inches shown in the picture.

Q. And the boards that Mr. Gover was taking off slanted down from the end of the flume, as shown in this picture?     A. Yes, sir.

Q. Defendant's Exhibit 1. [94]     A. Yes, sir.

Q. Now, Mr. Patching, do you know how many trips Mr. Gover had made up and down that ladder before you found him under the tramway?

A. No, I don't.

Q. Have you any way of knowing, approximately?

Mr. ZIEGLER.—I object to this question. He says he don't know. Now counsel asks him if he has any way of knowing.



(Testimony of Fred Patching.)

Mr. FAULKNER.—Approximately the number—of course he didn't see him.

Mr. ZIEGLER.—I don't see how he is in a position to testify, your Honor,—that has no bearing on the case.

The COURT.—I think he may answer that.

Q. Is there any way by which you can tell, Mr. Patching?

A. That I could tell the exact number?

Q. About the number?

A. I have a way of getting the least number that he could have made.

Q. How many would that be?      A. Seven.

Q. He made seven trips up and down. What is that based on, Mr. Patching—your knowledge?

A. The flume was 3 feet wide—3 2x12 formed the bottom of the flume; the sides of the flume were formed by two 2x12's, each side. Mr. Gover would knock one of these planks loose and lower it to the ground with a rope and go down and let it go, and go back up and let another one down with a rope—one plank at a time.

Q. That is the way you know he made at least seven trips?      A. Yes, sir.

Q. Now, Mr. Patching, there is one more question I want to ask you about these pictures. I think Mr. Gover testified about this board that is shown in Defendant's Exhibit 1 that reaches [95] out across the face of the ladder there, and that you say was about midway of the ladder, or about 10 feet from the bottom.      A. Yes, sir.



(Testimony of Fred Patching.)

Q. Was that board there on the 19th of April?

A. Yes, sir.

Q. Was it there before Gover commenced to work? A. Yes, sir.

Q. Was it there when he got through working?

A. Yes, sir.

Q. In the same position as shown in the picture?

A. Yes, sir.

Q. It wasn't disturbed? A. No, sir.

Q. You said you were present when Mr. Orton was there, and that you and Mr. Orton lifted Mr. Gover to the tramway? A. Yes, sir.

Q. After he complained of having fallen. Now, at that time did you hear Mr. Gover say anything to Mr. Orton about the slat or rung of the ladder that was lying on the tramway? A. No, sir.

Mr. FAULKNER.—That is all.

Cross-examination.

(By Mr. ZIEGLER.)

Q. Who was there first, Mr. Patching, you or Mr. Orton? A. Mr. Orton.

Q. Mr. Orton was there first? A. Yes, sir.

Q. So Mr. Gover could have said something to Mr. Orton before you arrived? A. Yes, sir.

Q. Just as he has testified to?

A. I don't know,—he had a chance to talk to him.

Q. When you went out there you asked Mr. Gover, "What is the matter there?" [96]

A. Yes, sir.

Q. And he told you he fell from the ladder, didn't he? A. Yes, sir.

(Testimony of Fred Patching.)

Q. Just the same way as he told here in the court-room, wasn't it?     A. Practically.

Q. Practically the same?     A. Yes, sir.

Q. No difference in his story at all?

A. No, sir.

Q. You didn't doubt it at that time?

A. I certainly did.

Q. You did at that time?     A. Yes, sir.

Q. Why did you put him on the tramcar and help carry him into the bunkhouse there?

A. I necessarily would help the man all that I knew how.

Q. You were of the opinion that he did not fall and had not been injured, weren't you?

A. Not that distance.

Q. Did you think he had fallen at all?

A. I thought he had fallen from some place—probably slipped and fell, or something like that, but not from the top of the ladder.

Q. Right from that moment you were of the opinion that he never fell from the top of the ladder?

A. I couldn't understand how it was possible for him to have fallen from the top of the ladder.

Q. And as soon as he complained of being sick and injured, right away you got suspicious?

A. No, sir, there wasn't any suspicion in my mind,—I couldn't understand how he fell from the top of the ladder.

Q. Do you want to swear that he did not fall from the top of the ladder?

(Testimony of Fred Patching.)

A. I couldn't say that—I wasn't there to see him.  
[97]

Q. You are not in a position now to say that Mr. Gover never fell from the ladder, are you?

A. From the top of the ladder?

Q. Yes.      A. No, sir.

Q. You wouldn't swear that he did not?

A. No, sir.

Q. Now, Mr. Patching, you say the hatchery was built in 1901?      A. Yes, sir.

Q. And when was this wheel-house constructed?

A. I am not certain as to that—probably about 14 or 15 years ago.

Q. About 14 or 15 years ago?      A. Yes, sir.

Q. And it remained the same from that time up to the time of the injury?      A. The wheel-house?

Q. The wheel-house.

A. You understand that what you are referring to as a house is not a house at all—it is a structure?

Q. Well, the structure, or whatever you want to call it.

A. It remained in practically the same condition.

Q. So on April 19th it was practically ready for dismantling, wasn't it?

A. We were dismantling it.

Q. It had served its purpose?      A. Yes, sir.

Q. The ladder was built at the same time as the wheel-house?      A. No, sir.

Q. Was the flume built at the same time the wheel-house was?      A. Yes, sir.

Q. The flume was built at the same time?

(Testimony of Fred Patching.)

A. Yes, sir.

Q. How did you get up to the flume there?

A. Up the ladder.

Q. When did you tear that ladder out? [98]

A. Somewhere about 8 or 9 years ago.

Q. So that if it had been built 14 years ago, the ladder that you first tore down would have been about 5 or 6 years old, wouldn't it? A. Yes, sir.

Q. And you tore that down because it was no longer fit for use? A. Yes, sir.

Q. And this present ladder was there three years at least longer than the other ladder?

A. Something like that.

Q. Did you saw the timber up that was used in constructing this present ladder?

A. Personally?

Q. No, at the hatchery.

A. Yes, sir.

Q. When you built this second ladder was it built of brand new timber? A. Yes, sir.

Q. You are positive of that, Mr. Patching?

A. Yes, sir.

Q. How do you know that?

A. How do I know it was built of new timber?

Q. Yes, sir.

A. Because we had no old timber to build it of.

Q. You had no old timber to build the ladder of?

A. No, sir.

Q. Did you build ladders out there of old timbers sometimes? A. I don't think we ever did.

Q. You were using some of this old timber in the

(Testimony of Fred Patching.)

flume at this time for building a fence, weren't you?     A. Yes, sir.

Q. You were using it for that purpose?

A. Yes, sir.

Q. And you are quite sure, Mr. Patching, that this ladder that [99] was constructed 8 years ago was constructed of brand new timber?

A. Yes, sir.

Q. You examined the place where this rung came from, didn't you?     A. Yes, sir.

Q. And it was perfectly sound?     A. Yes, sir.

Q. Just the same as that rung is?     A. Yes, sir.

Q. You didn't bring the portion of that rung here— A. I brought the entire rung.

Q. I mean the uprights.     A. No, sir.

Q. Were the uprights solid, too?     A. Yes, sir.

Q. Perfectly solid?     A. Yes, sir.

Q. You haven't got that upright here, have you?

A. No, sir.

Q. That portion from which the slat came?

A. No, sir.

Q. Why didn't you bring that?

A. I didn't think about it.

Q. You thought about bringing the rung, didn't you, Mr. Patching?     A. Yes, sir.

Q. You knew at the time you brought that rung in that the plaintiff had claimed that the upright was also decayed, didn't you?     A. Yes, sir.

Q. But you didn't see fit to bring that upright along?

A. I didn't think it was necessary,—I thought the

(Testimony of Fred Patching.)

rung would prove the condition of the ladder.

Q. The rung would prove the condition of the rung, Mr. Patching, but the rung would not prove the condition of the upright.

Mr. FAULKNER.—I object to those questions as argumentative, and [100] calling for a conclusion of the witness—what a rung proves or does not prove.

The COURT.—Yes—develop the facts.

Mr. ZIEGLER.—I don't care to pursue that line of cross-examination any further, your Honor.

Q. Mr. Patching, you are engaged over there in hatching out salmon fry? A. Yes, sir.

Q. And in order to do that you have troughs, tanks, etc., don't you, to keep them in?

A. Yes, sir.

Q. Use a considerable amount of timber?

A. Yes, sir.

Q. Lumber? A. Yes, sir.

Q. The lumber is sawed up in the mill there, isn't it? A. At the present time?

Q. No, it has been heretofore? A. Not all of it.

Q. A portion of it?

A. Nearly all of it. When we first started in there we didn't have a sawmill.

Q. Yes, but later on you got a sawmill, and practically all of the lumber was made from this sawmill?

A. Yes, sir.

Q. You also had a dynamo there furnishing lights?

A. Yes, sir.

Q. And a blacksmith-shop? A. Yes, sir.



(Testimony of Fred Patching.)

Q. And different kinds of mechanical appliances around there? A. I don't know what that means.

Q. Steam boilers and things like that?

A. We had a steam-heating boiler.

Q. Now, Mr. Patching, you stated you were up this ladder,—I [101] think you stated you were up this ladder, didn't you? A. Yes, sir.

Q. When were you up there?

A. Frequently for the last,—ever since the flume was built I have been up and down.

Q. When was the last time you were up there prior to the time Mr. Gover claims he was injured?

A. Prior to the time?

Q. Yes.

A. To that time?

Q. To that time.

A. I was up in the forenoon of that day.

Q. The flume wasn't being used then?

A. No, I think we turned the water out of the flume the August before. That was a portion of the old flume, and we built a new flume, and the old flume had not been used since,—Oh, I think we turned the water out in August, probably.

Q. You had been up there that morning?

A. I had been up there that morning.

Q. What did you go up there for?

A. To see where was the best chance to get some plank to fix the fence.

Q. And in going up there you told Mr. Faulkner you had put your hand on each rung in the ladder?

A. That wouldn't be correct because I wouldn't

(Testimony of Fred Patching.)

reach down to touch the bottom round with my hand.

Q. You mean all of the rungs from a reasonable height up to the top one?      A. Yes.

Q. The top of the ladder is right close to the flume, isn't it?

A. The flume is on this structure that carries the over-shot wheel, and the top of the ladder is about 20 inches away from the side of the flume. The structure that held the over-shot wheel was some 6 feet wide, and the flume was in the center of this and the flume was made so it was 3 feet on the inside.  
[102]

Q. Assuming this was the ladder and this was the top of the flume, the top of the ladder would be, you say, 20 inches from the top of the flume?

A. This ladder was below the top of the flume and even with the top of the structure that held the wheel; then the distance from a vertical line here back to the flume was about 20 inches, and the flume would probably be a foot or 15 inches above the top of the ladder.

Q. You could stand on the ladder and reach the flume all right?      A. Yes.

Q. So in going up you would be as likely to place your hand on the flume, as you approached the top rung of the ladder, as you would to put it on the top rung of the ladder, wouldn't you?

A. After you come to the top rung of the ladder, yes.

Q. Are you willing to swear that you put your

(Testimony of Fred Patching.)

hand on the top rung of this ladder going up there that day?     A. Yes, sir.

Q. You are sure of that?     A. I am sure.

Q. How do you know you did, Mr. Patching?

A. There was no other place to take hold.

Q. Couldn't you take hold of the top of the flume?

A. No, sir.

Q. Could you take hold of the side of the ladder and take hold of the flume?     A. No.

Q. It was only 20 inches away.

A. The ladder was nailed solid to this structure that held the wheel-house, and there was no way to get hold of it unless you would pinch it with your finger.

Q. What I mean, you had to get from the ladder to the flume to get on top of it, didn't you?

A. Yes, sir. [103]

Q. Did you have to stand on this top rung in order to get over to the flume?     A. No, sir.

Q. You could get over with your feet lower down, couldn't you?     A. Probably the next rung.

Q. So you don't mean to swear, Mr. Patching, that you put your hand on that rung, do you, that day?

A. Yes, sir.

Q. You are willing to swear to that?

A. I did swear.

Q. Absolutely?     A. Absolutely.

Q. Now, how long prior to that day were you up there?     A. I haven't the least notion.

Q. You haven't the least idea?     A. No, sir.

Q. Can you give an estimate?

(Testimony of Fred Patching.)

A. No, sir; I couldn't give an estimate.

Q. You wouldn't have had any occasion to go up there, would you—the flume wasn't in use?

A. No, sir.

Q. It might have been quite a while.

A. It might have been quite a while.

Q. Now, I think you stated, Mr. Patching, that there was no defect in the ladder at all?

A. No defect.

Q. And if Mr. Gover says that this rung gave way as he was descending the ladder he is mistaken?

A. Yes, sir.

Q. Now, you stated that when you took Mr. Gover into the bunkhouse you couldn't see any bruise on him?     A. No, sir.

Q. You are not a doctor?     A. No, sir. [104]

Q. You couldn't tell at that time whether he had suffered an injury to his spine or to his internal organs, could you?     A. No, sir.

Q. Now, you say that Mr. Gover ate well after he was injured out there?

A. After the first day or so.

Q. He wasn't sick then at all?     A. He could eat.

Q. He could eat all right?     A. Yes.

Q. He could get up and walk around?

A. No, he couldn't get up and walk around for several days.

Q. For several days?     A. Yes.

Q. Are you sure that he got up and walked around after several days?     A. He told me he did.

Q. You didn't see him yourself?

(Testimony of Fred Patching.)

A. He showed me how he could get around, standing up without hanging on to anything.

Q. Just like any other well man?

A. No, he didn't act like a well man.

Q. He didn't act like a well man?

A. He didn't step out like a well man.

Q. You said something about him speaking to you about getting some black figs when he first came there?      A. Yes, sir.

Q. There wasn't anything unusual about that, was there?

Mr. FAULKNER.—I object to this question as argumentative.

The COURT.—I think you are taking up unnecessary time, Mr. Ziegler. I think it is argument.

Q. Did you think anything more about this remark up to the time that Mr. Gover was injured?

A. What remark do you refer to, Mr. Ziegler?

[105]

Q. About wanting some figs.

Mr. FAULKNER.—Same objection.

The COURT.—What difference does it make whether or not he thought any more about it?

Mr. ZIEGLER.—I want to show it is a mere trifle, and insignificant.

The COURT.—Well, what is the use of wasting time on it?

Mr. ZIEGLER.—I want to get him to admit it, your Honor.

The COURT.—Ask him something else.

Q. You say after he was injured you told him if



(Testimony of Fred Patching.)

he wanted to go to Ketchikan you would take him to Ketchikan?     A. Yes, sir.

Q. And he said at that time it was foolish—he could do as well there as he could in town?

A. You mean when I first spoke about it, or afterwards?

Q. Afterwards.

A. He said, “I am doing as well here as I can do any place.”

Q. You didn’t think at that time that he was feigning any injury, or getting ready to sue the company, did you?     A. No, sir.

Q. He told you he thought he could do just as well there as he could if he came down to town?

A. Yes, sir.

Q. You didn’t know at that time whether Mr. Gover knew that he was seriously injured, did you?

A. I had no way of knowing what he knew.

Q. Now, Mr. Patching, you stated you picked this rung up the same evening?     A. Yes, sir.

Q. Why did you pick the rung up?

A. Why did I pick it up?

Q. Yes, sir.

A. I saw it laying there and it looked strange to me that that rung should be laying where it was.

Q. And that is the reason you picked it up? [106]

A. Yes.

Q. What was the reason that you kept that rung?

A. Because I couldn’t understand how that rung could have come loose.

Q. That is the reason you intended to keep it?



(Testimony of Fred Patching.)

A. Yes.

Q. At that time there wasn't anything said about bringing any suit against the company, was there?

A. Not that I know of.

Q. And you just wanted to keep the rung because you wondered how it came loose?

A. My curiosity was excited to find out how that rung could possibly have come loose.

Q. And that is the reason you kept the rung?

A. Yes, sir.

Q. Not in anticipation of any suit Mr. Gover was going to bring?      A. No, sir.

Q. Now, you say that you think he made about 7 trips up and down that ladder?      A. Yes, sir.

Q. That is just your opinion?      A. Yes, sir.

Q. You arrive at that opinion from the fact that there were seven pieces of timbers taken down?

A. Yes, sir.

Q. Wouldn't it have been possible for any of those timbers to have been dropped down?

A. I think if he had dropped them down he would have smashed them—they were water-soaked and very heavy.

Q. The only way that Mr. Gover could get up there to do that work was to go up that ladder, wasn't it, Mr. Patching?      A. Yes, sir.

Q. Some of that timber was taken off from down on the platform, wasn't it?

A. Not on the platform, no. [107]

Q. Didn't he take some of it off without having to go up the ladder?

(Testimony of Fred Patching.)

A. Yes,—excuse me; you refer to this platform that was on the side of the wheel-house?

Q. I think so.

A. No; this was going away from that entirely, Mr. Ziegler.

Q. But he could take some timber down without going up the ladder?     A. Yes, sir.

Mr. ZIEGLER.—That is all.

Redirect Examination.

(By Mr. FAULKNER.)

Q. Mr. Patching, how many employees were at the hatchery at the time that Gover claims to have fallen from the ladder, altogether?

A. I think about six. I have a memorandum with the number of men employed there, if you want that.

Q. No, that is all right.

A. About six.

Q. Now, Mr. Patching, if a man fell from that ladder the way it was situated—from the top of it—that is, having his hand on the top rung, and fell to the ground, where would he strike—fell to the bottom?

Mr. ZIEGLER.—I object to that because it is pretty hard to tell unless you see the man as he leaves the ladder.

The COURT.—Yes—that is argumentative, Mr. Faulkner.

Q. You say this walk extended from the bottom of the ladder out towards the tramway?

A. Yes, sir.

Q. What was the distance of that walk—

(Testimony of Fred Patching.)

A. You have it on the memorandum,—I think it was 7 feet 2 inches.

Q. That extended clear out to the—

A. Practically; there may be a little space of 2 or 3 inches between the end of the walk and the tramway.

Mr. FAULKNER.—That is all. [108]

Recross-examination.

(By Mr. ZIEGLER.)

Q. You said that before the ladder in controversy was built, the ladder that was there on the 19th of April, 1920, there had been another ladder up the side of the flume?

A. You mean where this ladder was?

Q. Yes.      A. Yes, sir.

Q. You said that one was taken down?

A. Yes, sir.

Q. Why was that ladder taken down?

A. To make room for the sawed lumber ladder. When we first started there we made all of our ladders out of poles,—when we first started there we had no sawmill, and when we got the sawmill—it is only a small sawmill—we were using a large amount of lumber and lumber was very scarce, and we made all of our ladders out of poles; so after while, when he got more lumber, we made the ladders out of sawed lumber.

Q. And is that the reason the pole ladder was replaced by the other ladder?      A. Yes, sir.

Mr. ZIEGLER.—That is all.

(Witness excused.)

**Testimony of Dr. R. V. Ellis, for Defendant.**

Dr. R. V. ELLIS, introduced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. Will you please state your name?

A. R. V. Ellis.

Q. You are a physician and surgeon?

A. Yes, sir. [109]

Q. How long have you been practicing, Doctor?

A. Eight years.

Q. What is the nature of your practice,—what kind of practice—any special—

A. Medicine and surgery.

Q. Where did you graduate, Doctor,—from what school?     A. Willamette University.

Q. Where have you practiced since you graduated?

A. In Oregon and Alaska.

Q. What has been the nature of your practice in Alaska?

A. It has been connected with the Treadwell Mining Company, and the Kensington Mining Company, general practice at Douglas, and with the Chicagoff Mining Company.

Q. Have you had much experience in examining personal injury cases and treating personal injury cases?     A. Considerable.

Q. Over how long a period of years?

A. Seven years.

Q. A period of seven years?     A. Yes.

(Testimony of Dr. R. V. Ellis.)

Q. That was at Treadwell and Chicagoff?

A. Yes, and Kensington.

Q. Those are quartz mines? A. Yes, sir.

Q. Now, Doctor, how long have you been in Ketchikan? A. Since the 15th of March I think it is.

Q. Do you know D. J. Gover, the plaintiff in this case? A. Yes, sir.

Q. Did you ever treat him? A. Yes, sir.

Q. Who employed you to treat him, Doctor?

A. Why, he came in from Loring,—I don't know who sent him—sent by the Alaska Packers' Association to be treated by me.

Q. Have you any contract with the Alaska Packers' Association? [110] A. No, sir.

Q. Are you in their employ in any way?

A. No, sir.

Q. Or were you at the time Gover came to you?

A. No, sir.

Q. Now, Doctor, will you explain to the jury the nature of Mr. Gover's condition, and the nature of your treatment, and the result of it?

A. When he first came up he complained of general soreness and lameness in the back lower part of the spine, and inability to get around without crutches and particularly the severe pain that he had at various times; he claimed turning over in bed and trying to straighten up and walk were very difficult, and he seemingly couldn't do it, and I couldn't recognize any physical derangement at the time of the first examination, and continued to note him very closely for a good many days, and I arrived at the conclusion



(Testimony of Dr. R. V. Ellis.)

that he either had lumbago, which is a condition that affects the lower part of the spine or spinal muscles, or that he perhaps could be rheumatic,—and I arrived at the conclusion at last that he had a typical case of lumbago. I treated him with applications of heat, which is considered the treatment for cases of lumbago, and he seemed not to respond to this treatment in any way. The symptoms seemed to be the same right along, and the symptoms were pain in the back—lower part of the spine, and a certain amount of pain and rigidity down the lower limbs.

Q. Did you examine to see whether there were any injuries to any of the bones of the back and hips?

A. Physical examination?

Mr. ZIEGLER.—If the Court please, that is very leading. I think if he asks the witness to testify what kind of an examination he made it would be a more proper question.

The COURT.—Yes; but the vital question is not if he made an examination, but what he found. If he leads on that of [111] course I will sustain your objection, but this question is simply, did you examine him. You can answer that yes or no.

The WITNESS.—Yes, sir.

Q. (By Mr. FAULKNER). What did you find as a result of this examination?

A. Found no evidence of external injury on the surface to the muscles of the spine and hips, no curvature, no crepitus on manipulation of any of the bony tissues.

Q. Did you find any evidence of an accident?



(Testimony of Dr. R. V. Ellis.)

Mr. ZIEGLER.—Now, I am going to object to that as very leading.

The COURT.—What did you find with reference to an accident? The way you put the question it is leading.

Q. What objective symptoms did you observe, if any? A. They were all subjective throughout.

The COURT.—I do not know whether the jury knows what that means.

Q. Explain to the jury the difference between subjective and objective symptoms, if you will.

A. Objective symptoms are symptoms I or anybody could recognize as a proper cause of the condition. Subjective symptoms are symptoms that are complained of by the patient.

Q. Something the patient tells you? A. Yes.

Q. You say you found no objective symptoms?

A. No.

Q. Of any kind. How long did you treat Mr. Gover, Doctor?

A. From May 26th, I think, until July 1st or 2d—somewhere along there,—I think it was the second.

Q. From May until July? A. Yes.

Q. Now, at any time were you told by the Alaska Packers' Association, this defendant, to discontinue your treatment? A. No, sir.

Q. When Mr. Gover came to see you, Doctor, did he complain that he was unable to walk without crutches? A. Yes, sir. [112]

Q. And how did he get to your office when he came—how did he come? A. I couldn't say.

(Testimony of Dr. R. V. Ellis.)

Q. I mean, did you see him come in and out?

A. He came upstairs on crutches; yes.

Q. Did you call on him in his room at the hotel at any time during the course of your treatments?

A. Yes, sir.

Q. What did you find him doing?

A. I found—I went two or three times—found him in bed sometimes, sometimes sitting on the edge of the bed, and once I didn't find him.

Q. Once you didn't find him in at all?      A. No.

Q. What did you find in the room, if anything?

Mr. ZIEGLER.—Just a minute, if the Court please—what he found in the room in the plaintiff's absence I think is immaterial.

Mr. FAULKNER.—I think it is very material.

The COURT.—I can see how it might be material,—if it is immaterial, Mr. Ziegler, it cannot hurt you.

Q. What did you find in the room at the time he was absent, Doctor?

A. I had been there twice that day. The first time I stayed quite a while—quite a long time with him, talking to him, trying to get history—examining as to reflexes, and at that time I thought perhaps there might be rheumatic tendencies. I went over to the drug-store and stood around for a while,—I didn't tell him I would bring him back a prescription—I figured on sending it to him, but I brought it back myself, and that is the time I knocked on the door and there was no answer, so I had the bottle in my hand and I opened the door. He was gone, but the

(Testimony of Dr. R. V. Ellis.)

crutches he had been using were there.

Q. The crutches were in the room, you say?

A. Yes.

Q. You spoke about reflexes—state to the jury about the condition of the reflexes. [113]

A. The Patellar reflex, at the time in the room at the hotel there, seemed to be a little exaggerated. There was no loss of reflex of the Patellar reflex. If it was other than normal it was exaggerated.

Q. That is the reflex at the knee? A. Yes, sir.

Q. All right, go on.

A. Oh, it seemed to me at that time that he had a little exaggerated Patellar reflex.

Q. Did you examine any other reflexes?

A. No other excepting the plantar.

Q. How was that? A. That was positive.

Q. Where is that, Doctor?

A. That is the toe sign—striking the foot and you would have a spastic condition of the toe.

Q. Let me ask you this question. If a man has loss of reflex—first, is it possible for a man to conceal or cover up the Patellar reflex and the other reflexes? A. Yes, sir.

Q. He can show an absence of the reflexes by practice? A. Yes.

Q. It is possible to do that. Now, in the case of loss of sensation, hysteria, anesthesia or paresthesia—all of those symptoms, can they be feigned to any extent? A. No, they cannot be feigned.

Q. They cannot be feigned? A. Not frequently.

Q. How would you explain it if a man had pares-

(Testimony of Dr. R. V. Ellis.)

thesia or anesthesia—how would you explain that—what would that be due to, generally, of the lower limbs?

A. Usually due to, possibly,—several things,—it might be due to a tuberculosis of the spinal region, or it might be due in some cases to psychosis or neuroses—for instance, [114] stigmatic hysteria, in all cases there is paresthesia and anesthesia.

Q. Due to disease?     A. Due to psychic disease.

Q. What is psychic disease? Explain that to the jury.

A. It is a condition due to the mind dwelling upon certain thoughts, having certain ideas in view, for a certain length of time, and there is a stigmatic degeneration that really develops.

Q. You would bring your mind to bear on that certain symptom and you would develop the symptom?

A. Yes, according to the symptom. Those symptoms of paresthesia and anesthesia are most marked in stigmatic hysteria.

Q. And those can be due to a hysterical condition?

A. No; hysteria has a different phase,—that phase of hysteria is a direct entity,—it is due to a psychic phenomenon.

Q. This anesthesia and paresthesia that you were speaking of can be produced by the mind?

A. Yes, sir.

Q. Acting along certain lines and certain ideas?

A. Yes, sir.

Q. Would it be possible for a man who has an ac-

(Testimony of Dr. R. V. Ellis.)

tion for personal injuries pending to develop any of those symptoms from a condition of mind caused by the pending litigation? A. I don't know.

Q. Have you observed any of those conditions in cases?

A. I have been on several cases of paresthesia and anesthesia in an analysis made by an analyst, when they were pronounced as stigmatic hysteria.

Q. And that sometimes clears up after the case is tried?

A. Well, I don't know whether I could follow that out or not, I am sure.

Q. Could a person have a lesion of the spinal cord which would cause a disturbance of the lower limbs and perhaps a disturbance of the lower reflexes and the nerves, without having an injury? [115]

A. Yes, sir.

Q. What would that be due to, where there was no injury?

A. Well, there are numerous conditions. We have one we call spondylitis—this is a condition—as far as the cause is known which has been absolutely sifted out—regarding syphilis—not a toxic condition, but as a direct entity—causes spinal necrosis—the spinal cord and the tracts involved—the reflex tracts especially, and you might have a tubercular condition of the spinal cord that would cause paresthesia and anesthesia.

Q. How is the spinal cord protected? Could you explain to the jury briefly how the spinal cord is protected by the bony structures?



(Testimony of Dr. R. V. Ellis.)

A. Protected in front by the bodies of the vertebrae, behind by the lining of the vertebrae with tissue around it, which is protected by a cartilage, similar to the cartilage in the nose. There is no place in the spinal column but what we have about  $\frac{3}{8}$  inch of bony tissue between the surface of the bone and the spinal cord.

Q. Now, is there anything else around the spinal cord—a sheet?

A. Yes; there is a very hard fibrous sheet that extends and protects the cord directly inside of the lamina of the bone—the spinal canal.

Q. Now, Doctor, in your opinion would it be possible for a man to have a lesion of the spinal cord due to a fall without having a fracture of some of those bones, or a dislocation?

A. It is very improbable.

Q. Now, in your opinion would it be possible for a man 69 years old to fall a distance of 21 feet—fall backwards a distance of 21 feet, and be thrown out a distance of 7 feet 3 inches, striking an iron rail, without breaking some bones or dislocating some bones?

A. It seems as though it would be impossible.

Q. You think it would be impossible? [116]

A. Oh, impossible things happen sometimes but it has not been my experience; and judging from my experience I would say that cases arising out of a fall, it would be practically impossible not to break a bone—especially if you light on the back.



(Testimony of Dr. R. V. Ellis.)

Q. Would it be possible to have a fall like that without having any bruises or discolorations where you struck?

A. No, that would be absolutely impossible.

Q. Now, Doctor, I want to ask you this question: When Mr. Gover came to you first did he have any discussion with you about a lawsuit for damages?

A. No, not at first.

Q. Well, at any time did you have any conversation with him in which he discussed damages—

A. About a lawsuit—no, he didn't say anything. He spoke to me several times trying to get me to say he was badly injured and that the company ought to send him below and take care of him. He wanted to know if I thought he would be able to work this winter again, and I told him I couldn't know until I found out how he got along. He seemingly did not get any better, and he asked me several times to see if I could not fix it up with Fred Heckman to send him down—wanted me to agree that the company ought to stand for those kinds of things. I said "If it is necessary I will do all I can to see that you get along," but I couldn't arrive at any conclusion that there was an injury. I still think it was lumbago. I haven't seen him since July—

Q. You haven't examined him since July, when he left you? A. No.

Q. I will ask you again, at any time did Mr. Patching or Mr. Heckman send you word to discontinue your treatment, Doctor? A. No.

(Testimony of Dr. R. V. Ellis.)

Q. Who paid you for the treatments you gave Mr. Gover?     A. The company.

Q. And you found no evidences of any injury when he came to you? [117]     A. No, sir.

Q. Nor in any of your examinations?

A. No, sir.

Mr. FAULKNER.—That is all.

Cross-examination.

(By Mr. ZIEGLER.)

Q. Doctor, you say he told you that he wanted to get you to say that he was injured so the company would take care of him?     A. Yes, sir.

Q. He told you he was injured and wasn't well, didn't he?     A. Yes.

Q. You didn't think anything strange about that, did you?     A. No; I was sure of it at once.

Q. If he were injured there would not be anything strange about him saying the company should take care of him?     A. No.

Q. And you didn't pay much attention to that?

A. Yes, I did. The idea was that he didn't say anything about this at the first few examinations and treatment, and by that time I had concluded there was no injury, and that is the reason I didn't feel as though I could go to the company and say that the man was injured as he wished me to do.

Q. You didn't go to them, did you,—you didn't tell them he was injured?

A. No, I didn't tell them he was injured.

Q. Did you tell them he wasn't injured?

(Testimony of Dr. R. V. Ellis.)

A. I don't believe I did. I told them I thought he had lumbago.

Q. You thought he had lumbago? A. Yes, sir.

Q. That was the result of your diagnosis?

A. Yes, sir.

Q. You say you haven't seen him since July?

A. No,—I have seen him but I haven't examined him.

Q. You haven't examined him since July? [118]

A. No.

Q. Are you in a position to say at the present time that he is now suffering with rheumatism or any form of rheumatism? A. I am not.

Q. Now, Doctor, an injury to the nerves of the spine could occur from a fall, couldn't it?

A. Yes, sir.

Q. A man falling 21 or 25 feet, if he should happen to strike on the fleshy part of the buttocks, it wouldn't show much,—it would be possible to have a fall like that and not be much bruised, wouldn't it?

A. We have these—

Q. Wouldn't necessarily show bruises?

Mr. FAULKNER.—Wait a minute—let the Doctor finish his answer.

The WITNESS.—What is the question?

(Question read to the witness.)

A. It would be pretty hard to answer that question, Mr. Ziegler.

Q. What I am getting at is, if a man should fall 20 or 21 feet and should happen to land on the fleshy

(Testimony of Dr. R. V. Ellis.)

part of the buttocks, it would not be likely to show bruises on his back, would it.

A. No—the place of contact.

Q. There would be some bruises there?

A. There should be, yes,—25 feet.

Q. You say you haven't examined him since July?

A. No.

Q. If Dr. Mustard testified that one of the buttocks, I forget which one, the right or the left, shows a decided shrinkage at the present time, apparent to the eye, would you say that that was due to lumbago? A. Very possibly.

Q. Very possibly—would you say that it would be likely to be from lumbago?

A. That is very hard to tell. Under the classification of lumbago as a subject many, many conditions may develop as time goes on, [119] from the seat of the internal trouble, due to contraction of the spinal muscles.

Q. Would lumbago affect the control of the bladder and the bowels?

A. Not unless the lumbago becomes fibrous, which it does in about 40 per cent of the patients, and that would affect all the nerves around the condition existing as lumbago, and the impairment of those nerves would naturally destroy the sympathetic reflexes.

Q. And the process is very fast—degeneration—in those organs, is it?

A. Degeneration is not rapid as a rule, slow.

Q. Would it be likely that a man who would re-

(Testimony of Dr. R. V. Ellis.)

ceive an injury such as has been described here,—would it be likely that if he had had rheumatism, would it be likely to affect those organs—that is what I am trying to get at?

A. Strictly rheumatism—it would be unlikely to affect that.

Q. You say you graduated from school 8 years ago, Doctor? A. Yes, sir; in June.

Q. Did you put in any time after that in hospitals?

A. Yes, sir.

Q. How much time did you put in in hospitals?

A. I put in a year.

Q. And you have been engaged in the actual practice for seven years? A. Seven years; yes.

Q. Most of that time has been with mining companies?

A. Mining companies, and private practice in Douglas, Alaska.

Q. How long did you practice privately at Douglas? A. Less than a year.

Q. And the rest of the time you put in working for the mining companies? A. Yes, sir.

Q. The Treadwell Company? A. Yes, sir.

Q. The Chichagoff Company? A. Yes, sir.

Q. And the Kensington Company? [120]

A. Yes, sir.

Q. You stated you were not under contract with the Alaska Packers' Association at the time of the injury—are you now? A. No, sir.

Q. Are you looking for a contract with them?

A. No; I haven't made any application.



(Testimony of Dr. R. V. Ellis.)

Q. You have contracts with a number of companies around here, don't you, Doctor?

A. With the Salt Chuck Mining Company and Smiley's Cannery—that is all.

Q. Now, an injury to the spinal cord, Doctor, would be hard to determine, wouldn't it, from a surface examination?      A. An injury to the cord?

Q. To the cord; yes.

A. Injuries to the cord, if from a traumatic source, are either due to dislocation or fracture of the vertebrae.

Q. I did not ask you what it was due to,—I asked you whether it was easy or difficult to ascertain.

A. It is quite difficult; yes.

Q. Would it be possible for a man falling a distance of 20 or 25 feet, to sustain an injury to the spinal cord?      A. Oh, yes.

Q. Would it be possible to cause an injury to the nerves controlling the bladder and the bowels?

A. Yes.

Q. And the lower regions?

A. It would be possible; yes, sir.

Q. That would be possible?      A. Yes, sir.

Q. If it should develop that the patient has no Patellar reflex at the present time, what would that be due to?

A. More than likely due to,—it is possible it is due to a spinal lesion, or it might be due to a clotted spinal region—

Q. That would not be due to lumbago, would it?



(Testimony of Dr. R. V. Ellis.)

A. Very probably.

Q. Isn't it a fact that in rheumatic lumbago the reflexes are exaggerated?

A. There is no such thing as rheumatic lumbago. Lumbago is a direct entity by itself, and it is due to — changes, usually.

Q. I understood you to say that when you examined him the reflexes were a little exaggerated?

A. Yes, sir.

Q. At that time you thought he had lumbago, didn't you?

A. Yes; I thought he had lumbago right straight through.

Q. And that condition exists, does it, in lumbago?

A. They may exist. If the lumbago is fibrous, if there was any irritation to the nerves, you would have an exaggerated reflex.

Q. If he has not reflex at all at the present time, would that be a symptom of lumbago?

A. No, sir.

Q. You haven't made any tests on the patient to determine that? A. Not lately.

Q. Now, in your examinations when Mr. Gover came to you, Doctor, how many times did you make a physical examination in which you had the body stripped?

A. It is pretty hard to say. I saw him three or four times in bed at the hotel, and he stripped to a certain degree on a number of occasions.

Q. Did you go over him on all of those occasions?

A. Not every time.

(Testimony of Dr. R. V. Ellis.)

Q. How many times would you say you made a thorough examination of the patient?

A. As far as a thorough examination of the patient, I didn't do it at any one time.

Q. It is a fact, Doctor, that people often have things the matter with them where they have to call in different diagnosticians to determine what is wrong with them—isn't that a fact?

A. Oh, yes. [122]

Q. And one doctor may think a person has a certain disease or ailment and another doctor would be absolutely of a different opinion?

A. Yes, sir.

Q. You have seen that, haven't you?

A. Very ordinary, yes, sir.

Q. And if someone should hold an opinion different to yours sometimes you would not say he was wrong, would you?

A. No, not unless I knew he was wrong.

Q. When Mr. Gover came to you he came with a letter from the Packers, didn't he, to you?

A. I think so,—I think they all do.

Q. Asking you to take care of him?

A. Yes, sir.

Q. And you did your best for him?      A. I did.

Q. And you became suspicious about the man, didn't you?      A. I did.

Q. Thought he was a faker?

A. I don't believe that I ever mentioned he was a faker.

(Testimony of Dr. R. V. Ellis.)

Q. Well, I am asking you if you do think that now?

A. Well, whatever the definition of faker is,—my idea of the man was that there were a good many symptoms that he complained of that were not a reality,—it was imaginative hysteria perhaps.

Q. They were imagination?

A. I didn't say that. I say if there was really something the matter with him in its direct entity the stigmata of hysteria was perhaps associated with it because I know some of the symptoms that he complained of do not automatically change.

Q. You say if there were really anything the matter with him? A. At that time, yes.

Q. Do you mean to say there is nothing the matter with Mr. Gover at the present time?

A. I don't know—I couldn't say anything about it. [123]

Q. Do you mean to say there wasn't at the time you treated him? A. No, I didn't say that.

Mr. ZIEGLER.—That is all.

#### Redirect Examination.

(By Mr. FAULKNER.)

Q. You said if there were an injury to the spinal cord due to a traumatic condition there would be evidence of a fracture or dislocation, is that true?

A. Yes, sir. I will have to alter that statement,—excepting possibly of a missile, knife or bullet wound that entered into the vertebral spaces.

Q. But an injury to the spinal cord due to a fall

(Testimony of Dr. R. V. Ellis.)

of the application of external force would show a dislocation or fracture of some bone?

A. Well, show—what do you mean by show?

Q. I mean it would be present—there would be a fracture or dislocation?

A. It would have to be there, yes, sir.

Q. Will you explain to the jury what you mean by a traumatic condition?      A. Due to injury.

Mr. FAULKNER.—Traumatic means due to an injury. That is all.

(Witness excused.)

**Testimony of G. F. Heckman, for Defendant.**

G. F. HECKMAN, upon being called as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

**Direct Examination.**

(By Mr. FAULKNER.)

Q. I think you have been sworn already?

A. Yes, sir.

Q. Your name is G. F. Heckman?      A. Yes.

Q. You said you were superintendent at the Loring cannery of the [124] Alaska Packers' Cannery Company?      A. Yes.

Q. Now, Mr. Heckman, you are acquainted with Mr. Gover?      A. Yes, sir.

Q. The plaintiff in this case. How long have you known him?

A. Not very long,—not until after he come over to the doctor.

(Testimony of G. F. Heckman.)

Q. A short time after he came over to the doctor?

A. Yes. I had seen him before that time.

Q. Was the treatment given him in Ketchikan by Dr. Ellis given under your direction?

A. Yes. I think there was a card sent over to the hospital.

Q. Was there any time that you stated to him or to anyone else that you were going to discontinue taking care of him? A. No.

Q. Now, Mr. Heckman, did you see Mr. Gover last Monday of this week, on the street?

A. Yes, sir.

Q. In Ketchikan—where was that?

A. That was down by the float—at the city float.

Q. Down by the city float?

A. Yes—down here.

Q. Towards New Town?

A. Yes, towards New Town.

Q. Will you explain to the jury what he was doing, in your own way?

A. I seen him walking along with both crutches under his arm, and reach in his pocket for a package. There was another gentleman with him, and he must have walked pretty close to a hundred feet or more—I couldn't tell exactly,—he had both crutches under one arm and he was reaching in his pocket at that time.

Mr. ZIEGLER.—For a package?

A. Yes,—I don't know whether it was for a package of tobacco or what it was.

Mr. FAULKNER.—That is all. [125]

(Testimony of G. F. Heckman.)

Cross-examination.

(By Mr. ZIEGLER.)

Q. Do you know whether Mr. Gover uses tobacco, Mr. Heckman?     A. No, I do not.

Q. You say you did not tell Dr. Ellis to stop the treatments?     A. No, I didn't.

Q. You talked with Mr. Gover about that, didn't you?     A. Yes.

Q. And you told Mr. Gover that the Doctor said there wasn't anything the matter with him?

A. No; I said the Doctor said he had rheumatic conditions, and lumbago, and he couldn't find any sign of any injury of any kind.

Q. And you told him at the Stedman Hotel, you would not be responsible for room rent any more?

A. No; I told him I would send him down below if he wanted to go down, and he said, "I will see about it," and he went out and never came back to give me an answer, and I didn't know what he would do.

Q. Did you tell him at that time if he would sign a release contract you would pay his way down?

A. I did not,—he had already signed the pay-roll.

Q. You didn't say anything about signing up at all?     A. No.

Q. Did you tell anybody at the hotel that the company would not be responsible for his room rent?

A. I did not.

Q. You never told anybody that?     A. No.

Q. Are you sure of that?     A. Yes.



(Testimony of George A. Brown.)

Mr. ZIEGLER.—That is all.

(Witness excused.) [126]

**Testimony of George A. Brown, for Defendant.**

GEORGE A. BROWN, introduced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. State your name, please.

A. George A. Brown.

Q. Where do you live?      A. Ketchikan.

Q. How long have you lived here?

A. Twenty-three years.

Q. Do you know Mr. Gover, the plaintiff in this case?

A. I met him last Sunday, the first time.

Q. Did you see him last Monday, in Ketchikan?

A. Yes.

Q. Where did you see him?

A. I was walking with Mr. Heckman down to get some trays made in the shop, and he came along—he was nearly opposite to us, and Mr. Heckman says, “That is the man from Loring who has a suit against us.” “Why,” I said, “He don’t seem to be hurt very bad.” He said, “It don’t look it to me, either.” He was walking along, you see, with a Mexican—he had a Mexican with him, on the other side, and they stopped and were looking at some boats, and he took this crutch from the right hand

(Testimony of George A. Brown.)

and put it under the other arm, and went in his pocket for something with this hand—I don't know what he wanted, and he kept on walking up town.

Q. He had both crutches under one arm?

A. He had both crutches under one arm when I saw him.

Mr. FAULKNER.—That is all.

Cross-examination.

(By Mr. ZIEGLER.)

Q. How long did you watch him, Mr. Brown?

A. Just a few—a couple of minutes or so,—we were going along. [127]

Q. Was he ahead of you or back of you?

A. No; he was just opposite of us, coming up on the opposite side of the street.

Q. You watched him for a couple of minutes, you say?

A. We naturally took a look to see how he was getting along.

Q. How far did he walk then?

A. I judge it was somewheres around 50 or 60 feet,—I watched him, you see.

Q. You are quite positive of that, are you?

A. Yes, sir.

Mr. ZIEGLER.—That is all.

(Witness excused.)

**Testimony of J. R. Heckman, for Defendant.**

J. R. HECKMAN, introduced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

**Direct Examination.**

(By Mr. FAULKNER.)

Q. Please state your name.

A. J. R. Heckman.

Q. Where do you live?      A. Ketchikan.

Q. How long have you lived here, Mr. Heckman?

A. Thirty years.

Q. Do you know the plaintiff in this case, Mr. Gover?      A. I know him by sight.

Q. Have you seen him in Ketchikan during the past two months at any time?      A. Yes, sir.

Q. Have you seen him on the streets?

A. Yes; I seen him several times on the streets.

Q. Have you ever seen him walking without his crutches?

A. Yes, sir; I seen him walking down in New Town, I guess, probably three weeks ago,—he was walking along—of course I was riding [128] in the car with my wife—and he was walking along as I would walk, with a crutch under each arm. I was coming up from the other end of town,—we were riding out in the car,—and of course we had him under kind of an observation ever since he has claimed he was hurt,—and he was carrying a crutch under each arm and walking along as you or I would walk.

(Testimony of J. R. Heckman.)

Mr. FAULKNER.—That is all.

Cross-examination.

(By Mr. ZIEGLER.)

Q. You say you have been watching him, Mr. Heckman?

A. I have watched him from time to time, yes.

Q. Because he claimed that he was injured?

A. Yes, sir.

Q. And that made you very suspicious?

A. I was very suspicious of him; yes.

Q. How much time did you put in watching him?

A. Every time I saw him I took notice of him. I have seen him around the business section here where he would use his crutches as though he was very badly hurt.

Q. Did you ever see him use them in any other place except the business section?

A. I think the only place is on the New Town walk; and I think I saw him once after that, on the New Town walk, when he was with a lady and little girl, or boy, I don't know which it was, and at that time he wasn't using his crutches,—he was walking without them.

Q. That is the only time that you saw him outside of the business district?     A. Yes, sir.

Q. You saw him walking with his crutches under each arm, could you see him in the car?

A. I came along with the car, and came along slowly so as to watch him.

Q. You kept him in front of you, did you? [129]

(Testimony of J. R. Heckman.)

A. I kept him in front of me for a while, and then I passed on ahead.

Q. Did you stop your car to watch him?

A. No; I went on slow gear.

Q. You went very slow?

A. Very slow; yes.

Q. Just as slow as he was walking?

A. No; but I saw him for a distance behind, coming up this way.

Q. How long a time did you see him?

A. Oh, I suppose probably three or four minutes—maybe five.

Q. Sure of that, Mr. Heckman?

A. Yes, absolutely.

Mr. ZIEGLER.—That is all.

(Witness excused.)

**Testimony of Mrs. J. R. Heckman, for Defendant.**

Mrs. J. R. HECKMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. Will you please state your name?

A. Mrs. J. R. Heckman.

Q. Where do you live, Mrs. Heckman?

A. Ketchikan.

Q. Do you know the plaintiff, Mr. D. J. Gover?

A. Only by sight.

(Testimony of Mrs. J. R. Heckman.)

Q. Have you seen him within the past two months, in Ketchikan?

A. Well, as near as I can remember, about three weeks ago I saw him on the New Town walk.

Q. How was he walking then, Mrs. Heckman?

A. With a crutch under each arm.

Q. Was he using the crutches to aid him?

A. No, sir; he had a crutch under each arm.

Mr. FAULKNER.—That is all.

Mr. ZIEGLER.—No questions.

(Witness excused.) [130]

**Testimony of Milton Orton, for Defendant.**

MILTON ORTON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

**Direct Examination.**

(By Mr. FAULKNER.)

Q. Please state your name.

A. Milton Orton.

Q. Where do you live, Mr. Orton—where are you employed?     A. Loring hatchery.

Q. Were you employed there on the 19th of last April?     A. Yes, sir.

Q. Do you know J. D. Gover, the plaintiff in this case?     A. Yes, sir.

Q. How long have you known Mr. Gover?

A. Since a year ago last July,—about the first of July some time.

Q. Did you, at the Loring hatchery, any time prior to the 19th of April, 1920, have any conversa-



(Testimony of Milton Orton.)

tion with Mr. Gover regarding accidents and compensation for accidents?     A. Yes, sir.

Q. What was said by him?

A. Well, he came in my room to get me to write a letter for him, and at that time he asked me if I knew anything about this company insurance, and I told him no, that I didn't; and he says, "Well, put it in the letter that I am insured with the company for \$500," I think it was—I am not sure of the amount.

A. Put it in the letter?     A. Yes.

Q. This was prior to the 19th of April?

A. Yes, sir.

Q. And he asked you if you knew anything about the insurance compensation?     A. Yes, sir.

Q. That was in case of accident?

A. In case he was hurt, yes. [131]

Q. In case he was injured. Now, Mr. Orton, on the 19th of April did you see Mr. Gover lying at the foot of a ladder extending up to the top of the water-wheel flume?

A. Not at the foot of the ladder,—he was under the tramway.

Q. How far is that from the ladder?

A. Well, I should think it would be 7 or 8 feet.

Q. What was he doing down there?

A. He was just laying there.

Q. At that time, or at any time, did he point out to you this slat lying on the tramway?

A. No, sir.

Q. Did he point out to you any slat or rung of

(Testimony of Milton Orton.)

the ladder lying on the tramway, or anywhere else?

A. No.

Q. The slat I refer to is Defendant's Exhibit No.

4. Now, did he at that time say anything to you about the condition of the ladder?

A. Not that I heard, anyway.

Q. Said nothing to you?

A. Not that I heard.

Q. What did you do with him when you found him there under the tramway?

A. I believe I started to try to drag him out, and I went to look for Mr. Patching, and I met him coming, and the two of us dragged him or took him out.

Q. Where did you take him?

A. Took him up on the logging deck, and there was some lumber on the car and we unloaded that and put him on the car and took him to the bunkhouse.

Q. At that time did he point out this slat or any slat to you?      A. No, sir, not to me.

Q. Did he at any time?      A. No, sir.

Q. Did you ever see that slat before, Mr. Orton?

[132]

A. I never saw it before I came to town.

Q. Until Mr. Patching showed it to you?

A. No. I saw it on the ladder before it came off.

Q. You say you took him to the bunkhouse?

A. Yes, sir.

Q. Did you make any examination of him there?

A. Mr. Patching did.

(Testimony of Milton Orton.)

Q. Were you present?      A. Yes, sir.

Q. Did you see any bruises on his body anywhere?

A. No.

Q. Any cuts?      A. No.

Q. Any broken bones?      A. No.

Q. Now, Mr. Orton, did you see Gover again during his stay at the hatchery,—did you see him any after that time?      A. Oh, yes, several times.

Q. You saw him several times?      A. Yes.

Q. Do you remember when he came to Ketchikan?

A. Yes, sir.

Q. Did you come down to the cannery with him?

A. Yes, sir.

Q. How did you get him from the hatchery to the cannery?

A. We brought him down the hatchery lake in a gas boat.

Q. That is the first lake?

A. That is the first lake; took him on a little tram car to the top of the hill, from there he walked down to the second lake.

Q. He walked to the second lake?      A. Yes, sir.

Q. Then what did you do?

A. Well, he got in the boat at the second lake and we took him across—a rowboat. [133]

Q. Did he get in himself?      A. Yes, sir.

Q. Then what did he do?

A. There was another tramway and we took him down on that tramway.

Q. Then where did you go?

A. Came to the salt lake.

(Testimony of Milton Orton.)

Q. Then where did you go?

A. Across a short portage and took another row-boat to Loring.

Q. How did he get across this portage?

A. I don't remember that.

Q. Did you give him any assistance?

A. I don't remember that.

Q. You took him in the rowboat down to Loring?

A. Yes.

Q. And then he came to town?      A. Yes.

Mr. FAULKNER.—That is all.

Cross-examination.

(By Mr. ZIEGLER.)

Q. You are working up there now, Mr. Orton, with Mr. Patching?      A. Yes, sir.

Q. And expect to continue to work there?

A. I don't know.

Q. As far as you know you do?

A. As far as I know, yes.

Q. And you have talked this case over up there quite a bit, haven't you?      A. Talked it over some.

Q. And the general impression was up there that Mr. Gover was feigning being injured, wasn't it?

A. I believe so.

Q. That was the general impression up there. Now, when he fell there on that day, you were the first one there, weren't you?      A. I think so. [134]

Q. Now, Mr. Orton, didn't you ask Mr. Gover what was the matter?      A. I believe I did.

Q. And didn't he tell you that that damned ladder

(Testimony of Milton Orton.)

up there gave way, it was rotten,—didn't he tell you that? Try and think.

A. He told me that he fell from the top of the ladder.

Q. Didn't he point up there to it?

A. I believe he did.

Q. And didn't you tell him you knew it was rotten yourself and that you would never have gone up there unless the old man had gone before you?

A. No, I never did.

Q. You didn't tell him that? A. No.

Q. You are positive of that?

A. I didn't tell him anything of that kind at all. I was busy getting him out under the tramway and I didn't pay any attention to the ladder at the time.

Q. And you are positive you didn't say that?

A. Yes, sir.

Q. You stated before that you stepped away and waited there a while for Mr. Patching to come up, didn't you?

A. After I tried to pull him out I went to look for Mr. Patching, and I met him a short distance away, and we both went back.

Q. And you were there quite a while while you were waiting for Mr. Patching, weren't you?

A. No, I wasn't,—I was trying to get him out.

Q. Just what did you say to Mr. Gover?

A. Oh, I don't remember,—there was no reason why I should remember every word that I said to him.

Q. Are you willing to swear that you didn't say



(Testimony of Milton Orton.)

that you knew that ladder was rotten and you wouldn't go up it unless the old man went up first?

A. I certainly am, yes.

Q. But now you say you don't remember what you said. [135]

Mr. FAULKNER.—I object to that line of questioning as arguing with the witness.

The WITNESS.—I said I don't remember all of what I said,—I might have said other things that I don't remember.

The COURT.—A person might not be able to remember what he said but he can remember what he did not say.

Q. Now, when Mr. Gover spoke to you about this insurance, did you have any insurance there?

A. I told him I didn't know a thing about it.

Q. Did you ever in your life before talk to anybody about any insurance or compensation acts,—you are a workman, aren't you?

A. I probably have in my life, but not up there, that I remember of.

Q. Did you think anything peculiar or suspicious about this?

A. No, not until he told me to put it in the letter—I thought it was kind of queer.

Q. You don't know but what he was writing to his wife down at Cottage Grove?

A. Sure, I was writing it for him.

Q. And you were writing to his wife?      A. Yes.

Q. And you thought she wasn't interested in the matter at all.



(Testimony of Milton Orton.)

Mr. FAULKNER.—I object to that—purely argument.

Mr. ZIEGLER.—All right, I will withdraw the question, and ask this question.

Q. Did you think there was anything strange about a man writing to his wife and telling her about any insurance or compensation a working man may be entitled to?     A. Not if he was injured, no.

The COURT.—I do not think it makes any difference whether he thought it was strange, Mr. Ziegler.

Mr. ZIEGLER.—All right. That is all.

(Witness excused.) [136]

### **Testimony of Carl Peterson, for Defendant.**

CARL PETERSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### **Direct Examination.**

(By Mr. FAULKNER.)

Q. Mr. Peterson, state your name, will you?

A. Carl Peterson.

Q. Where do you live, Mr. Peterson?

A. Over at the Loring hatchery.

Q. Do you know Mr. Gover. the plaintiff in this case?     A. Yes, sir.

Q. Were you out at the Loring hatchery on the 19th of April last?     A. Yes, sir.

Q. Were you there prior to that time?

A. No, I was down the lake when it happened.

Q. No, you do not understand me,—how long have you been at the hatchery?

(Testimony of Carl Peterson.)

A. I have been up there 7 years and 6 months.

Q. You were there all the time Mr. Gover was there?     A. Yes, sir.

Q. Did you at any time, at the hatchery, tell Mr. Gover that the ladder that extended up the side of the flume, over the water wheel, had been there for 20 years?

A. No, sir, and he hasn't asked me, either. I don't know how old that ladder is there,—I couldn't tell anything about it, and Mr. Gover has not asked me that yet.

Q. He never asked you?     A. No.

Q. Mr. Peterson, you are still at the hatchery—still working?     A. Yes, sir.

Q. Were you there while Mr. Gover was in bed, in the bunkhouse?     A. Yes, sir.

Q. After he claimed to have been injured on the 19th of April?     A. Yes, sir.

Q. Did you examine his body?

A. Yes, sir,—only Mr. Patching was in there to fix it. [137]

Q. Did you help take care of him?

A. Some time, but not all the time.

Q. Did you see him the 19th of April, the day he claimed he fell?     A. Yes, sir, I did.

Q. Did you see Mr. Patching examine him that day?     A. Yes, sir.

Q. Did you see any bruises or cuts on his body?

A. No, nothing.

Q. Now, Mr. Peterson, while he was in bed there

(Testimony of Carl Peterson.)

did he complain to you of any trouble—any symptoms—any pain?

A. Yes; one time he was in there hollering in the night-time—hollering—making a lot of noise, so in the morning I told him if he keep on like that he have to ask Mr. Patching for another room—I couldn't sleep, and after that he was quiet.

Q. You told him to quit hollering?

A. Yes, sir.

Q. And after that he was quiet?      A. Yes, sir.

Q. Did he complain of not being able to move his legs?      A. No, he didn't.

Q. I say did he complain of that?

A. He couldn't move his legs, but one night I was laying in bed there and he had his foot up over the other bunk there, stretching himself.

Q. Did he see you when he was doing this?

A. No, sir.

Q. Did he see anybody?

A. No, sir; the other fellows had gone to bed, and I was going to bed, too,—I had my bunk right close to him, and I just happened to look over there, and he had his foot up on the other bunk.

Q. Both feet?      A. No, only one.

Q. To stretch his feet?      A. Yes, sir. [138]

Q. Now, Mr. Peterson, you are quite sure there were no bruises or cuts on him?

A. Yes, sir, I am sure of that.

Q. And no broken bones?

A. Not that I could see.

Mr. FAULKNER.—That is all.

(Testimony of Carl Peterson.)

Cross-examination.

(By Mr. ZIEGLER.)

Q. You say he didn't see you when he was stretching himself?     A. No, sir.

Q. How do you know he didn't ?

A. He couldn't see me.

Q. But you could see him, couldn't you?

A. Yes, sir.

Q. Why couldn't he see you?

A. No, he couldn't see me because there was an old coat hanging there—I look underneath, and he couldn't see me.

Q. Couldn't he look underneath it, too?

A. No, sir.

Q. But you could, couldn't you?     A. Yes, sir.

Q. You could see him?     A. Yes, sir.

Q. But he couldn't see you?

A. No, sir; because he was laying the other way—backward.

Q. You have worked there, you say, 7 years and 6 months?

A. Yes; maybe two or three days one or the other way—I don't know that.

Q. Did you hear Mr. Patching testify in this case, —you heard Mr. Patching's testimony?

A. I don't understand.

Q. You heard Mr. Patching when he was on the witness-stand, didn't you?     A. Yes, sir. [139]

Q. You heard him say that ladder was put up there about 8 years ago?     A. Yes, sir.

Q. And you went there 7 years and 6 months ago?

(Testimony of Carl Peterson.)

A. Something like that.

Q. You said you didn't know how old the ladder was,—you don't know how old that ladder was?

A. No, sir.

Q. How did it look when you first went there, do you remember?

A. Yes, I remember that because I was up there the third day after I was coming there.

Q. How did the ladder look then?

A. Looked pretty good.

Q. It looked pretty good?      A. Yes.

Q. Like a new ladder?

A. Well, it looks good—it hadn't been long there, I could see that, but I couldn't say how long.

Q. You say Mr. Gover was hollering one night?

A. Yes, sir.

Q. Was that shortly after he was injured,—was that a day or two after he was injured by the fall?

A. I don't know,—maybe three or four days after.

Q. What was he hollering for?

A. Always make lots of noise,—in the day-time, too.

Q. How would he make a lot of noise?

A. He said it was so bad he had to holler.

Q. By hollering you mean groaning?

A. Yes, sir.

Q. Like a person in pain?      A. Yes, sir.

Q. And you jumped on him and told him he couldn't groan around there, didn't you?

A. Yes, sir—I told him to cut it out.

(Testimony of Carl Peterson.)

Q. Told him that he had no business to groan?

[140] A. I didn't say that.

Q. You told him to cut it out, didn't you?

A. Yes, sir; I told him to cut it out.

Q. And he did cut it out? A. Yes, sir.

Mr. ZIEGLER.—That is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock the following morning.)

### MORNING SESSION.

December 4, 1920, 10 A. M.

Mr. ZIEGLER.—If the Court please, I would like to recall Mr. J. R. Heckman for one or two questions on recross-examination.

The COURT.—Very well.

### **Testimony of J. R. Heckman, for Defendant (Recalled.)**

J. R. HECKMAN, upon being recalled, having been previously duly sworn, testified as follows:

Recross-examination.

(By Mr. ZIEGLER.)

Q. Mr. Heckman, you stated yesterday that when you saw Mr. Gover he was walking along the street with one crutch under each arm?

A. There was a crutch under each arm but they were kind of dragging behind as he was walking along.

Q. Will you take the crutches and explain your testimony in that respect?



(Testimony of J. R. Heckman.)

A. He wasn't walking as I was walking, but he walks of course as an old man would walk—he was dragging his crutches like that; later on I saw him and he couldn't step without them—on the same day.

Q. Did you see him that way all the time, or did you see him put his crutches back under his arms then?

A. As I passed by him, by the time I passed, his crutches were [141] still dragging and I didn't look around.

Q. You never looked around?      A. No.

Q. You were not interested enough to do that?

A. I was kind of interested because I was suspicious of the case, yes.

Q. Mr. Heckman, you heard Mr. Faulkner state in his opening statement in this case that you were not interested in any manner in this case, didn't you?

A. Yes, sir—I am not interested in it.

Q. Now, Mr. Heckman, isn't it a fact that when the jury was being empanelled in this case that you told Mr. Faulkner to excuse the juror Larson?

Mr. FAULKNER.—I object to that as incompetent, irrelevant and immaterial, and not cross-examination.

Mr. ZIEGLER.—I want to prove Mr. Heckman's interest in the case. I think this is clearly competent, if the Court please.

The COURT.—Is that juror a juror in the case now?

Mr. ZIEGLER.—Not at present, no, your Honor,—he was excused.

(Testimony of J. R. Heckman.)

Mr. FAULKNER.—Mr. Heckman might be the defendant and still be testifying.

Mr. ZIEGLER.—Just goes to his interest in the matter, if the Court please.

The COURT.—What do you mean by interest?

Mr. ZIEGLER.—Well, if a witness manifests a great deal of interest in a certain case, I think that is a question affecting the weight of his testimony, if the Court please, that should be taken into consideration by the jury. Now, the statement was made in open court here before the jury—

The COURT.—“One interested in a case” ordinarily has reference to one having a financial interest in the case.

Mr. ZIEGLER.—That is the only object,—I am leading up to that, if the Court please.

The COURT.—I think on cross-examination he may bring out the extent of his interest. [142]

Mr. ZIEGLER.—Answer that question, Mr. Heckman.

The WITNESS.—What is the question again please?

Q. Now, Mr. Heckman, isn't it a fact that when the jury was being empanelled in this case that you told Mr. Faulkner to excuse the juror Larson?

A. I don't remember the man's name. Mr. Faulkner came back and asked me what I thought of the jury, and I pointed out one man I thought would not make a good juror—yes.

Q. And that was the man that Mr. Faulkner excused later?

(Testimony of J. R. Heckman.)

A. I don't know whether that is the man that he excused or not,—I am not sure that it was.

Q. Do you recall whether or not it was the man just preceding—

The COURT.—It does not make any difference now which man it was.

Mr. ZIEGLER.—All right.

Q. Mr. Heckman, you have no financial interest in this case at all?

A. No, but if you want me to I will tell you what interest I have.

Q. You may tell me what interest you have.

A. I worked for the Alaska Packers' Association for about 30 years and I have always found them to be on the square, and they were on the square with me, and when I quit them I quit of my own accord, and naturally my sympathies are with the Alaska Packers' Association.

Q. And that is the reason for your interest manifested in this case?

A. More or less—to see they get fair play.

Q. You think they are being very much taken advantage of, don't you, Mr. Heckman?

A. If you want me to tell you, I think it is a black-mail case, yes—if that is what you want me to say.

Q. You think Mr. Gover is here trying to hold the Alaska Packers' Association up for some money?

A. I certainly do.

Q. Would you swear to that, Mr. Heckman?

A. I couldn't do that. [143]

Q. Then it is only your opinion?

(Testimony of J. R. Heckman.)

A. My opinion, from the facts and circumstances I have heard since this case started.

Q. You understand, Mr. Heckman that it is possible for a man to be mistaken in his opinion, don't you?     A. It is possible, yes.

Q. And you state this as your opinion?

A. It is my opinion.

Q. You have been an employer of labor for quite a while Mr. Heckman?     A. Yes, sir.

Mr. ZIEGLER.—That is all.

Redirect Examination.

(By Mr. FAULKNER.)

Q. Mr. Heckman when was the first time that you mentioned to me that you had seen Gover carrying his crutches and not leaning on them for support?

A. Yesterday while the case was going on here,—yesterday afternoon.

Q. Yesterday afternoon in court?     A. Yes, sir.

Mr. FAULKNER.—That is all.

(Witness excused.)

Mr. FAULKNER.—That is our case.

DEFENDANT RESTS. [144]

REBUTTAL.

**Testimony of D. J. Gover, in His Own Behalf (In Rebuttal).**

D. J. GOVER, the plaintiff herein, upon being recalled as a witness in his own behalf, having been previously duly sworn, testified in rebuttal as follows:

(Testimony of D. J. Gover.)

Direct Examination.

(By Mr. ZIEGLER.)

Q. Mr. Gover, you heard Mr. Peterson testify in this case, didn't you?     A. Yes, sir.

Q. You know who he is?

A. Yes, sir, I know Mr. Peterson.

Q. Who is he?

A. He is considered the foreman by the men up there all the time.

Q. Foreman at the hatchery?

A. By the workingmen, yes, sir.

Q. He was such at the time you were there?

A. He was there but not working right there,—he was working down below there; yes, sir, he was there.

Q. Did you hear him testify you were hollering one night out there shortly after you were injured?

A. Yes, sir.

Q. Is that true?

A. No, I wasn't hollering.

Q. What were you doing, if anything?

A. I was groaning.

Q. Why were you groaning?

A. Well, sir, I was in such misery,—pain all through here, and such pain I didn't know what to do.

Q. You were suffering from the pain?

A. Indeed I was; and if I would lie on my left side it seemed like my heart would stop, and I tried to move back,—that was the trouble, I couldn't move myself.



(Testimony of D. J. Gover.)

Q. You couldn't move after you were injured very well?

A. No, indeed, I could not. [145]

Q. I think you stated on your direct examination in order to turn you they would have to pull the blankets with you?

A. They would pull the blankets with me. Mr. Archibald and Mr. Orton would turn me, and they pulled on the blankets because it hurt me so bad to move.

Q. And that is the only hollering you did there, Mr. Gover?

A. Yes, sir, that was the only hollering I did, was groaning.

Q. Now, did you hear Mr. Orton testify in this case? A. Yes, sir.

Q. Will you state what he said with reference to the fact that he knew that the ladder was rotten, and he would not have gone up there unless the old man had gone himself—did he ever say that to you? A. Yes, sir; he did.

Q. Just state the occasion of that.

Mr. FAULKNER.—I think this is repetition,—it is not rebuttal.

Mr. ZIEGLER.—Yes, it is rebuttal.

The COURT.—What does it rebut?

Mr. ZIEGLER.—In his testimony Mr. Gover said this took place,—I think I asked him if this was the day that he fell. In talking it over with Mr. Gover, Mr. Gover tells me it was not then, but it was later on in the bunkhouse.



(Testimony of D. J. Gover.)

The COURT.—Just ask him when it took place.

Q. When did that conversation take place, Mr. Gover?

A. It was after I was hurt,—in the bunkhouse.

Q. And that wasn't the day that you fell, then?

A. No, sir.

Q. Did you hear the witnesses testify, Mr. Gover, that after you fell you walked part of the way into the bunkhouse,—did you hear that?

A. Yes, sir. If I did I didn't know it.

Q. If you did walk any you don't remember it?

A. No, sir, I don't. I do remember they had a hard time putting me in the bunk, and got another bunk and put it outside as [146] soon as possible—I don't know, but I think that same night—put it out in front of the bunk I slept in.

Q. You heard Mr. Orton testify about some time prior to your injury you were talking about some insurance or something?

A. Yes, sir.

Q. Just explain that.

Mr. FAULKNER.—The same objection—that was asked him in the case in chief and it was explained in the defense. It only takes up time.

Mr. ZIEGLER.—I think it is a matter that should be explained.

The COURT.—My recollection is that that was something new developed by Mr. Faulkner on cross-examination—a part of the defense and not a part of the plaintiff's case,—you simply asked him some questions about it on cross-examination. Then the plaintiff goes on the stand and he is entitled to re-

(Testimony of D. J. Gover.)

but anything that you brought out on your case. If he had brought it out himself as part of his case, of course I would not permit it, because it would not be rebuttal.

Mr. FAULKNER.—That is right. I just wanted to save time. I don't have any serious objection to it.

Mr. ZIEGLER.—Answer the question, Mr. Gover.

The WITNESS.—Yes, sir,—it wasn't compensation, it was insurance,—it was a matter of insurance and some other matters I was sending down home.

Q. You were writing to your wife at the time?

A. Yes, sir.

Q. Mr. Orton was writing the letter for you?

A. Yes, sir.

Q. What did you state in the letter about your insurance?

A. That if a man got killed at the work there was a thousand dollars, was the way I understood it—if a man got killed; and I also asked Mr. Patching that night that I was going to go away what it was about that, and he said it wasn't anything. "Why," I said, "the boys talked about that quite a good deal— [147] several of the boys"—Sam—I don't remember saying the name right now, "and some of us were talking, and that is the way it was understood with the boys."

Q. And that is the reason you mentioned it to your wife in writing the letter?

A. Yes, sir; and that is the talk I had with Mr. Orton.

(Testimony of D. J. Gover.)

Q. Now, Mr. Gover, you heard the testimony of the witnesses about your walking along without your crutches? A. Yes, sir.

Q. Will you just explain that to the jury?

A. Yes, sir, I will. Gentlemen, I try every day to walk a little ways, a few steps, without my crutches. The doctors have all told me I wouldn't get well unless I did, and I have got a good deal of energy and I try all I can—try to walk a good deal every day, and if my wife is close to me I try harder because she will catch me if I fall.

Q. If you should walk four or five minutes, Mr. Gover, without your crutches what would happen?

A. I would just give out and fall—I get so tired and go all to pieces, and my legs won't work.

Q. Have you ever been able to walk without your crutches for four or five minutes?

A. Indeed I haven't—not since I was hurt.

Q. Demonstrate to the jury how you walk with the crutches and how you might change at times.

A. My hardest work is getting up and down, and if I can get up this way I can take one crutch this way and I can take one crutch this way—under my arm this way—and if I am careful I can walk quite a ways, and I do all those kinds of stunts. This part of my hand gets awfully badly cramped on me, and I think when Mr. Heckman saw me I was doing something like this,—I remember down by the bakery, and my wife said, "Look out, now, you will fall." I can walk around this way, and if I tip over this way I go down. [148]

(Testimony of D. J. Gover.)

Q. Can you stand up without your crutches and straighten up?

A. Talk about straightening up. I cannot straighten up unless I get by something—I want to touch something, and I can stand that way just for a few minutes, but to take and walk or stand that way, gentlemen, I cannot do it.

Q. Mr. Heckman and Mr. Brown said that you pulled out some tobacco out of your pocket?

A. I don't use tobacco.

Q. How long has it been since you used tobacco?

A. I never used it very much. I think along in about '74 and '76 I used it very little—smoked a little, but it was on account of being in a barn and the boys would say, "Have a cigar—have a cigar," and I got to failing, so I said to the doctor, Doctor ———, I was driving a team from the barn for the doctor, driving out a little ways, and I said, "What is the matter with me? I don't have any appetite." He said, "You are like me, you are smoking too much, and you better quit," and I did quit. I don't like tobacco—it makes me sick.

Q. And you haven't smoked any since that time?

A. I might have a little, but I haven't for years. It makes me sick—tobacco smoke.

Q. You stated, I think, that Mr. Heckman notified you he would not be responsible for your hotel bill after a certain date at the Stedman Hotel?

Mr. FAULKNER.—I object to that as not rebuttal, incompetent, irrelevant and immaterial, having

(Testimony of D. J. Gover.)

no place in the case at all, and simply taking up the time of the Court.

The COURT.—I think it has been gone into.

Mr. ZIEGLER.—I think I asked him about that, but after talking with Mr. Gover the fact develops that he was informed by the proprietor of the hotel that he could not pay his bill after a certain date, and on that date he sent him a hotel bill for a week in advance. I think it is proper under the circumstances to explain that. I think Mr. Gover testified that Mr. Heckman himself told him, but it came to him in a different [149] manner—the proprietor of the hotel notified him, and I think it is a matter that should go to the jury.

The COURT.—He may correct his statements.

Q. Mr. Gover, did Mr. Heckman tell you he would not pay your hotel bill?

A. I understood he—

Q. I mean did he tell you personally?

A. Yes.

Mr. FAULKNER.—The same objection to that—it is incompetent, irrelevant and immaterial, and not rebuttal.

The COURT.—The objection is overruled. Of course my ruling was that he may correct his statement, explain what he meant by it, but I do not want to go into the whole question again.

Mr. ZIEGLER.—All right, your Honor,—I just want to clear that matter up, is all.

Q. Answer the question, Mr. Gover.



(Testimony of D. J. Gover.)

A. It came through Mr. Ferris. He says, "How about this hotel bill?"—

The COURT.—Just ask him the question—

Mr. ZIEGLER.—I think he is endeavoring to explain that.

The WITNESS.—I was coming to that but I had to say this other because I says to the clerk, "Where is Mr. Heckman? Will you point him out to me?" I saw him once before—talked a few minutes, but I didn't know the man—didn't believe I would know him if I would see him. In a little while he says, "There is Mr. Heckman," and I walked over and I said, "How do you do, Mr. Heckman? How about this—are you going to quit me?"—or something like that. "Well," he says, "the doctor says there ain't much the matter with you," and we talked a little while and he said, "We will send you down home." I said, "Well, I will have to see another doctor," I said, "there is something the matter with me." "Well," he says, "we will not pay it."—

The COURT.—He went all over that, in those exact words, on his examination in chief. [150]

Q. Now, just answer the question again, Mr. Gover,—I don't know whether you understood my point. Did Mr. Fred Heckman tell you personally that he would not pay your bill at the Stedman hotel,—did he speak those words to you?

Mr. FAULKNER.—Same objection to this question—not rebuttal, incompetent, irrelevant and immaterial.

The COURT.—The objection is overruled.



(Testimony of D. J. Gover.)

A. He said he couldn't do any more for me.

Q. He said he couldn't do any more for you?

A. Yes.

Q. I will ask you did you after that time pay your own hotel bill?

A. Yes, sir; the next day after that I did,—Mr. Ferris came to me the second time.

Q. He was the proprietor of the hotel?

A. Yes, sir.

Q. What did he say to you?

Mr. FAULKNER.—I object to what Mr. Ferris said to him as incompetent, irrelevant and immaterial, and not rebuttal.

Mr. ZIEGLER.—Well, it perhaps may not be, if the Court please, but it is simply a misunderstanding that has arisen, and it looks, the way the testimony has gone in, as if Mr. Gover was telling a falsehood about the matter, and I am now trying to clear it up and show how it took place. An old man is pretty liable to tell things and get mixed up, especially if he is injured, and I think it should be cleared up.

The COURT.—If the proprietor of the hotel told him it would not be material one way or the other in the case. It would not have been admitted to start with if the question had been what the proprietor of the hotel told him,—that would not be binding on the defendant.

Mr. ZIEGLER.—All right, your Honor, I will not pursue that line of questions any longer.

Q. Now, Mr. Gover, you heard Dr. Ellis say that

(Testimony of D. J. Gover.)

he went to your room one day and you were absent from the room and your crutches were there? [151]

A. Yes, sir.

Q. Will you explain that?

A. I think so, pretty easy. I went to Mr.—the drug-store—Mr. Ryus and got another pair of crutches, and I remember too that there was a man helped me out to the toilet one day—I had an accident and he helped me.

Q. What do you mean by an accident, Mr. Gover?

A. I couldn't hold my bowels, and something like a hemorrhage happened. I don't know who the man was, but he was right there in the next room, and he came and helped me out and back, and I was out to the toilet and washroom for probably half an hour or more.

Q. How far was that from your room?

A. Not very far because the clerk gave me a room back there as close as he could to the washroom and toilet on account of me being hurt—he gave me a room right close, and I only had a little ways to go and through open doors to the toilet.

Q. Now, Mr. Gover, I will ask if at any time you were at the hotel you ever went downstairs and out on the street without your crutches?

A. No, sir.

Mr. FAULKNER.—I object to that as not rebuttal—it is a repetition of the same story.

Mr. ZIEGLER.—I don't care to insist on it, your Honor.

Q. Now, Mr. Gover, have you ever suffered with

(Testimony of D. J. Gover.)

lumbago in your life before,—I mean suffered with lumbago at all?     A. No, sir.

Q. Did you ever have any form of rheumatism?

A. Only in my arms a little,—that was in about '93, just for a little while, from working in the water with my hands.

Q. Now, what kind of work were you doing just before this time—before you went to work at the hatchery?

A. I had been working in the shipyards in Portland.

Q. How long did you work there? [152]

A. About 10 months.

Q. Did you miss any time?

A. No, sir; worked at nights.

Q. You worked at nights for about 10 months?

A. Yes, sir.

Q. What kind of work were you working on?

A. I was working in the Scotch Marine Boiler Works at the Willamette Iron and Steel Works.

Mr. ZIEGLER.—That is all.

Cross-examination.

(By Mr. FAULKNER.)

Q. You told us on your direct examination that you had been prospecting just before you went up there.

A. I went out with my nephew, yes, sir, and went up *the and* stayed up there probably a week. I just went through there on a visit to see my sister and her folks, and him and I, he taken the car and we

(Testimony of D. J. Gover.)

went up there prospecting, and then we were talking to a man and he talked about the Rainy Hollow District up here in Alaska, so we pulled out pretty quick for that. He said, "How soon can you get ready?" I said, "Right away," and went back down to my home and come to Alaska.

Mr. FAULKNER.—That is all.

Mr. ZIEGLER.—Just one question I forget,—I will ask you if you have chopped any kindling out at the house since you got back.

Mr. FAULKNER.—I object to that as immaterial.

The COURT.—What does it rebut?

Mr. ZIEGLER.—It does not rebut anything particularly, your Honor.

The COURT.—Very well—do not ask it.

(Witness excused.) [153]

**Testimony of Mrs. D. J. Gover, for Plaintiff (In Rebuttal).**

Mrs. D. J. GOVER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

**Direct Examination.**

(By Mr. ZIEGLER.)

Q. State your name.      A. Mrs. D. J. Gover.

Q. How old are you, Mrs. Gover?

A. I am 59.

Q. Are you the wife of Mr. Gover there?

A. Yes, sir.

(Testimony of Mrs. D. J. Gover.)

Q. After Mr. Gover was injured where was the first that you saw him?

A. When he came back home.

Q. State whether or not Mr. Gover was suffering from rheumatism or lumbago at that time.

Mr. FAULKNER.—I object to that as not rebuttal and calling for a conclusion of the witness.

The COURT.—What does it rebut, Mr. Ziegler?

Mr. ZIEGLER.—Dr. Ellis testified, inferentially at least, that he thought Mr. Gover was afflicted with lumbago and rheumatism, and that was the main portion of his testimony, along that line—he felt quite sure of that. I want to show by this witness the true condition of Mr. Gover as she found him when he arrived home and how he has suffered since that time, and the various things that he suffered with. I think that rebuts the inference that Dr. Ellis has given by his testimony.

The COURT.—What is Dr. Ellis' testimony? It is his opinion—an expert's opinion as to what was the matter with Mr. Gover. Now, anything that rebuts that opinion—that shows that that was not his opinion, would be rebuttal, but anything that shows that that opinion is not well founded would not be rebuttal,—that is, would not be rebuttal of Dr. Ellis.

Q. Mrs. Gover, you have been with Mr. Gover since he arrived home and you came back up here with him? A. Yes, sir. [154]

Q. You, of course, have observed him around the house, and everything like that? A. Yes, sir.



(Testimony of Mrs. D. J. Gover.)

Q. State whether or not he is able to walk to any extent, even around the house, without his crutches.

A. No, sir; no, sir, he has not been.

Q. What happens if he tries to stand without his crutches?

A. Several times I would ask him if he wouldn't stand his crutches up and try, and he would go over backwards, and if I hadn't caught him a time or two he would have fell on his back, and a time or two he fell forward. I would like for him to walk without them,—I would like for him to try to walk without them.

Q. You want him to get well?

A. Yes, sir, I do.

Mr. ZIEGLER.—That is all.

Mr. FAULKNER.—No cross-examination.

(Witness excused.)

PLAINTIFF RESTS.

SURREBUTTAL.

**Testimony of G. F. Heckman, for Defendant  
(Recalled in Surrebuttal).**

G. F. HECKMAN, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

Direct Examination.

(By Mr. FAULKNER.)

Q. At the time you saw Mr. Gover last Monday, when you said he was walking without his crutches, was Mrs. Gover with him?      A. No.



Mr. FAULKNER.—That is all.

Mr. ZIEGLER.—No questions.

(Witness excused.)

DEFENDANT RESTS. [155]

(Whereupon at the close of the testimony and before the commencement of the arguments, counsel for the defendant made the following motion.)

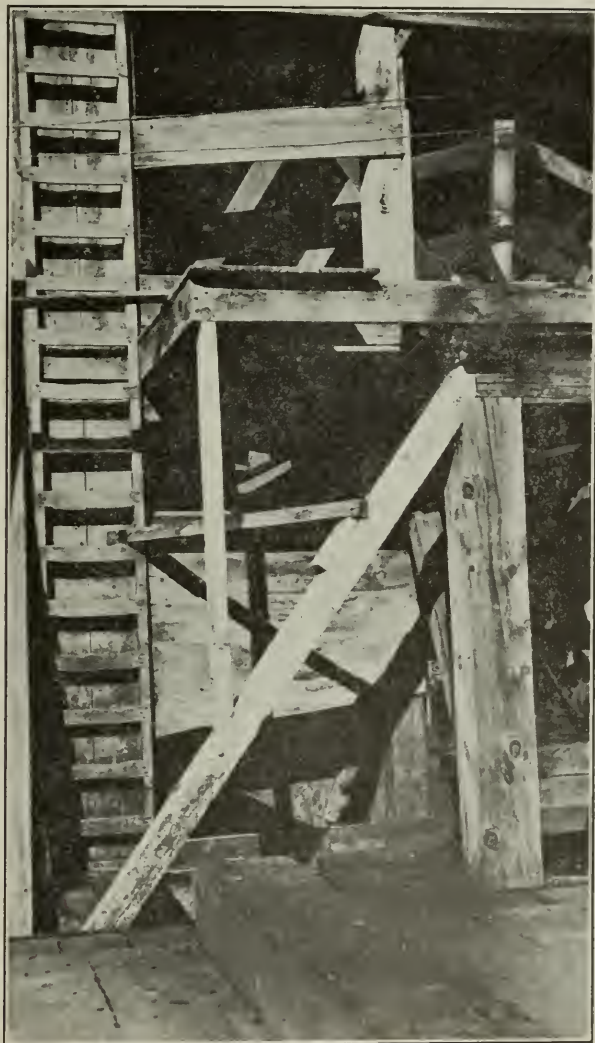
Mr. FAULKNER.—The defendant now moves the Court to instruct the jury to find a verdict for the defendant in this case, on the ground that there has been no negligence shown and no liability on the part of the defendant to pay the plaintiff any damages, and the evidence, taken as a whole, could not be taken by twelve reasonable men except in one way, and that would be to find a verdict for the defendant.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Allow us an exception, if the Court please. [156]

**Defendant's Exhibit No. 1.**

#2. Front view of ladder but going up a little higher than #1 but not quite so low.



[Endorsed]: Defts. Exhibit No. 1. Received in Evidence Dec. 3, 1920. In Cause No. 411-KA. J. W. Bell, Clerk. By —————, Deputy.

**Defendant's Exhibit No. 2.**

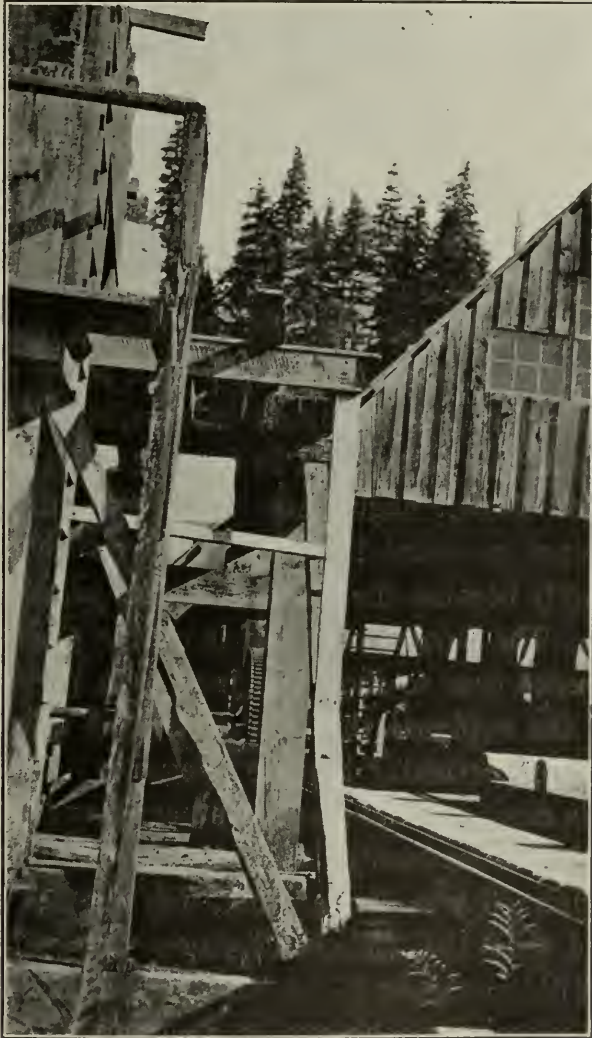
#3. Front view of ladder but not going as high as #1 & 2.



[Endorsed]: Defts. Exhibit No. 2. Received in Evidence Dec. 3, 1920. In Cause No. 411-KA. J. W. Bell, Clerk. By —————, Deputy.

**Defendant's Exhibit No. 3.**

#5. Side view of ladder but not going quite to top of flume but going lower than #4.



[Endorsed]: Defts. Exhibit No. 3. Received in Evidence Dec. 3, 1920. In Cause No. 411-KA. J. W. Bell, Clerk. By —————, Deputy.



Whereupon the defendant requested, in writing, that the Court give the following instructions:

INSTRUCTION No. I.

Gentlemen of the Jury:

You are instructed that if any witness in this case has wilfully testified falsely upon any material matter, you are at liberty to disregard his whole testimony, except in so far as his testimony may have been corroborated by other credible witnesses.

INSTRUCTION No. II.

Gentlemen of the Jury:

You are instructed that the plaintiff in this case bases his action upon negligence; that is, he alleges that defendant was negligent in furnishing him a defective ladder to be used in the course of his employment. Now, negligence is never presumed. You cannot presume that an employer was negligent simply because the plaintiff claims to have been injured. The burden of proof is on the plaintiff in a negligence case to show the jury by a preponderance of the evidence that the defendant was negligent in the particular that he alleges.

In this case, as I have said the negligence charged is that the ladder leading up to the top of the flume, which plaintiff was dismantling, was old and defective, and that the defendant knew this, and the plaintiff did not know it. A ladder is not like a complicated piece of machinery, or a complicated appliance; it is a very simple appliance, and the employee using the ladder is in the same position to ascertain its defects, if any exist, as the employer. The defendant is not bound to insure the safety of its em-

ployees at all hazards; it is simply obliged to use due care to see that the appliances with which the employee works, and the places where he works are reasonably safe; and in this case the defendant was under no obligation to plaintiff to make any particular examination or test of the ladder in question. [157]

### INSTRUCTION No. III.

Gentlemen of the Jury:

You are instructed that the testimony in this case shows that the plaintiff at the time of the alleged accident, was engaged in dismantling a portion of an old flume and that under such circumstances an employer is not held to the same degree of care that it might be under the circumstances where a building might be in the course of erection, or where the employee was performing the duties in the regular course of the business of defendant.

The work of tearing down an old building or structure may involve certain risks which arise in the progress of the work, and which the employer cannot always anticipate and provide against. Therefore, the rule which makes it incumbent upon an employer to provide an employee with a reasonably safe place in which to work does not apply in such a situation.

Thompson on Negligent, sec. 3979 and sec. 4115.

### INSTRUCTION No. IV.

Gentlemen of the Jury:

If you find in this case that there was any negligence on the part of the defendant but that the plaintiff himself was also negligent in any degree



whatever, your verdict must be for the defendant.  
[158]

After arguments by the respective counsel, the Court instructed the jury as follows:

### **Instructions of Court to the Jury.**

Gentlemen of the Jury:

This is an action brought by D. J. Gover, the plaintiff, against the Alaska Packers' Association, the defendant, for damages for an injury alleged to have been sustained by him on account of and through the negligence of the defendant company. In this kind of a suit—that is, a suit for damages for personal injury arising from negligence, brought by the employee against the employer—the law requires that the employee who brings the suit should set forth in his complaint wherein the negligence consisted, and that he should establish that negligence by what is called a preponderance of the evidence, and that if he does establish the negligence complained of by a preponderance of the evidence and also establishes by a preponderance of the evidence the damages that he has sustained, he is then entitled to recover those damages from the employer.

Now, in this case the plaintiff has set forth in his complaint that the negligence consisted as follows: He says that he was employed in and about the hatchery at Loring and that the defendant, his employer, directed him to dismantle an old flume constructed of boards, about 20 feet from the ground; that said flume was reached only by means of a stationary ladder running from the ground to the

flume; that while the plaintiff was actually engaged in the work he placed his right hand on the top rung of said ladder preparatory to descending to the ground; that while so descending the said rung broke loose and gave way, precipitating him violently to the ground, a distance of approximately 20 feet; that he landed on the ground beneath, striking with great force on his left hip, side and shoulder; that the rung that broke loose and gave way, and the timbers to which said rung was fastened by nails, were very old and rotten and wholly unsuitable and unfit for the purpose for which they were used; that the defendant—that is the company— [159] knew, or ought to have known, the condition of such rotten timbers, and that he, the plaintiff, did not know the condition of such rotten timbers; that it was the duty of the defendant to exercise ordinary care to keep the said ladder in reasonable repair, and that the defendant was negligent in failing to exercise that ordinary care to keep the ladder in reasonable repair,—so you will see that the whole gist of the action is the charge of negligence on the part of the defendant company.

The defendant company answers by saying that it was not negligent at all, and that the risk of being injured was a risk that was assumed by the employee, if there was any risk at all,—that it was assumed by the employee as one of the ordinary risks of the business—of the employment. The whole case, then, depends on the question as to whether there was or was not negligence.

Now, what is negligence? It has been most aptly

defined as the absence of that degree of care which under the circumstances an ordinarily prudent person would exercise.

Every man, unless he be a hermit living by his own labor on herbs and roots, absolutely cut off from his fellows, necessarily comes into contact with others, and that contact gives rise to certain reciprocal duties and obligations. In whatever relation one stands toward another, the law holds each of them to the exercise of that degree of care which an ordinarily prudent person would exercise under the circumstances. If either one fails to exercise that degree of care he is said to be negligent.

The expression "take care," or the "care of an ordinarily prudent person," means in the law that a person must be as careful as an ordinarily prudent man having due regard to the rights and welfare and safety of others would be under the circumstances of the particular case that is being inquired about.

The degree of care which an ordinarily prudent man would take so as not to inflict an injury upon another is different under different conditions. It may, and usually does, depend upon a variety of circumstances, such, for instance, as the relations between the [160] parties; the age, experience and capacity of him who has the right to demand the care; the nature of the business engaged in, and of the instrumentality used; and the likelihood of, and reason to apprehend, danger; and the ability or inability of the other party to appreciate the dan-

ger, or guard against it. Under some circumstances an ordinarily prudent man would be very careful indeed—he would be just as careful as he possibly could be—that is to say, he would exercise the highest degree of care. In such cases the very highest degree of care is only ordinary care, for that is the care which in that particular case an ordinarily prudent person would use. In other cases the circumstances may be such as not to call for the exercise of such a high degree of care; they may be such that an ordinarily prudent man would say, “there is little or no danger to be apprehended because whatever danger there is is perfectly patent, and the person I am dealing with has ability, experience and capacity to judge of such danger and to guard against it”; or he might say to himself, and it might be a fact, “the character of this thing is so well and so generally known that I can safely rely upon the common sense of all men dictating to them that they should not handle it—should not go near it.

For instance, if a poison should be exposed with notice or some indication to tell that it is poison—what might be an indication to a grown person might not be an indication to a person of tender years or immature experience.

Negligence, then, as before said, is simply want of proper care. It is the doing of that which an ordinarily prudent man would not do under the circumstances of the case, or it is the omitting to do that which an ordinarily prudent person would not omit to do under the circumstances of the case.

I have told you that the question of negligence de-



pend upon a variety of circumstances, and that among the circumstances to be considered in determining how much care it is incumbent upon one person to use towards another is the relation between the [161] parties. For instance: Suppose a chemist is making experiments with poisons and leaves a poison unguarded in the laboratory in which he is making the experiments, and suppose a person unwittingly takes some of the poison and suffers therefrom. Now, the fact that the chemist left the poison unguarded in any way might or might not be negligence (depending in large measure upon his relation to the injured party). It would be negligence in him so to leave his poisons if he had reason to apprehend that little children, not knowing anything about poisons, might wander into the laboratory and, attracted by something alluring in the appearance of the poisons, should be injured by reason of yielding to the usual curiosity and meddlesomeness of children; but it would not be negligence in the chemist to so leave his poisons unguarded if the only person at all liable to be in the laboratory or to handle said poison was an employee or assistant of the chemist who himself was well versed in poisons, knowing the appearance, characteristics and potency of the same.

Now, the relation between the plaintiff and the defendant in this case is the relation of master and servant. The defendant company employed the plaintiff to do some work in the dismantle of an old flume, the removal of timber therefrom, and the building of a fence out of the timber.



In the relation of master and servant there are certain circumstances under which the thing done by an ordinarily prudent person is so uniformly established that it has been crystallized into a principle of law that it is a legal duty to do that thing, so that it may be said that the duty of doing that particular thing is imposed by law. Now, one of the things required by law, in the relation of master and servant, is the furnishing to the servant by the master of the instrumentalities with which to do the things required of him, and the furnishing to the servant of a place wherein to do those things. It is the duty of the master to use ordinary care, the care of an ordinarily prudent person, to see that the appliances furnished to the employee wherewith to do [162] the work required of him are reasonably safe and adapted to the work, and it is the duty of the master to use reasonable care—ordinary care—to see that the place where the work is to be done is reasonably safe, and that the way of getting to the work or of leaving the work is reasonably safe. The master is not required to be absolutely sure that the place where the work is to be done is absolutely safe, but he must use reasonable care to see that the place is reasonably safe. The master is not an insurer against all accidents that may happen—the fact that an injury is received while an employee is at work for somebody does not give rise to the presumption that the master is negligent. Negligence is never presumed—it must be proven. The negligence that must be proven when the charge is that the place where the work was to be done is not safe or the ap-

pliance is not safe—the negligence that must be proven is this: the plaintiff must prove that the master did not exercise ordinary care—reasonable care—under the circumstances to see that the place where the work was to be done was reasonably safe. It is not required that the master must be absolutely sure that the appliances are absolutely safe. If the master uses proper care to see that the appliances are and are kept reasonably safe—that is, reasonably safe having due regard to the nature of the work and to the dangers which might be reasonably apprehended under the circumstances to a man of the intelligence, experience and capacity of the servant—if the master has done those things—if he has been that careful—if he has exercised the care of an ordinarily prudent person to see that the *work* where the *place* was to be done was reasonably safe, then the master has done his duty and cannot be chargeable with negligence.

If the appliances and the circumstances under which the work was done, the place in which the work was done, are of such nature as in the judgment of the jury an ordinarily prudent man would inspect from time to time in order to discover defects, and if, in this case, the master did not inspect, and if an inspection would have revealed a defect and if that defect caused the injury, why, then, ordinary care would not have been observed. In other words, [163] to make it plainer to the jury, if the jury believes that an ordinarily careful man, prudent man, would not only have put up a good ladder in the first place, but would have inspected it from time to time,

then they can hold the defendant to the duty of inspecting,—the duty of inspecting would be what an ordinarily prudent and careful man would do, if the jury thinks it was required. Some things would not have to be inspected at all—some things would have to be inspected more than others—some things would have to be inspected oftener than others,—it would all depends entirely upon what the thing was—what the circumstances were—as to whether an inspection from time to time would be a part of ordinary care or a part of extraordinary care. It is the duty of the master to exercise reasonable care to furnish a reasonably safe place.

Now, if the jury thinks that in this case reasonable care included the duty of inspecting from time to time, why, then the defendant would be held to that duty—would be held to the duty of inspecting. If the jury thinks that under the circumstances of the case an ordinarily prudent man would not have gone to any more trouble in inspecting this ladder than the defendant went to, then the defendant would not be required to inspect any more than it did,—it is a matter entirely for the jury to decide whether or not the defendant did anything with reference to this ladder that an ordinarily prudent person would not do, or whether it omitted to do anything that an ordinarily prudent person under the circumstances would not have omitted to do.

The plaintiff alleged in his complaint that the ladder was old and rotten and wholly unsuitable and unfit for the purpose for which it was used, and that the defendant knew, or ought to have known, its

condition. You have heard the evidence as to the age of the ladder; you have heard the evidence as to the liability of wood to decay; you have heard all the facts and circumstances related to you on both sides—it is for you to determine what are the facts and circumstances,—it is for you to determine how old [164] the ladder was; what the likelihood of its decaying was, and whether or not a reasonable and prudent person would have inspected the ladder by tapping it or in any other way, in addition to what the defendant says it did in inspecting the ladder by looking at it,—it is for you to say whether any other inspection was called for under the circumstances and whether any other inspection would have revealed any defect.

Now, one of the defenses is that the servant, Mr. Gover, assumed the risk. Now, the law about assumption of the risk by an employee is simply this, the employee has a right to assume that his employer has used ordinary care to see that the appliance that he is to do the work with, or the place in which he is to do the work, is reasonably safe, but any other risk over and above that that is naturally inherent in the business and that is open and obvious to the employee, the employee assumes. In other words, after the master has done his duty, the employee assumes all other risks that are obvious and known to him, or could have been known to him by reasonable diligence. He does not assume the risk of the employer's negligence,—the employer has no right to be negligent, if you understand thoroughly what negligence means as I have attempted to ex-



plain to you. The employee has a right to assume that the employer has not been negligent, and has a right to assume that the employer has used ordinary care to see that the place where the work is to be done is reasonably safe,—that is what is meant by assumption of the risk.

You are the sole judges of the testimony in this case, the credibility of the witnesses, and the inferences that are to be drawn from the testimony. You make up your mind what witnesses are to be believed when they tell you a thing in court very much the same as you do when they tell you anything in every day life,—you size them up; you take into consideration their demeanor, their candor or lack of candor, their ability to know of the things that they testify to, their inclination or disinclination to tell the truth and the whole truth; consider how they stood cross-examination; [165] consider whether their testimony is reasonable and probable, and comports with other testimony in the case that you believe; consider whether they have any interest in the result of the thing that they are telling you. or the impression they are seeking to make upon you,—you would not necessarily disbelieve a witness or a person simply because he had some interest in the matter, but you would consider what that interest was and whether or not it affected his testimony, and if so how much it affected it—you would throw that interest into the scales, and you would weigh the whole thing. You are not to count the number of witnesses,—by that I mean that you do not judge by the number of witnesses, but you judge by the weight of the testi-



mony—by the probability and reasonableness of the testimony, and how it comports with common sense and common observation and experience.

The burden of proof in this case is upon the plaintiff. The plaintiff must produce what is called a preponderance of the testimony to the effect that the defendant was negligent. Preponderance of testimony means the greater weight of the testimony—more convincing testimony,—the plaintiff must have more convincing testimony that the defendant was negligent than the defendant would have to produce that it was not negligent, because the plaintiff is the one who brings the suit and he must prove his case to the jury by what is called the preponderance of testimony. He does not have to prove it as the Government has to do in criminal cases—that is to say, he does not have to prove it beyond a reasonable doubt, but he does have to prove it by a preponderance of the testimony, which does not mean necessarily counting the witnesses—it means the weight of the testimony.

If any witness in the case has wilfully testified falsely as to any material matter, you are at liberty to disregard his entire testimony except insofar as it is corroborated by other testimony that you do believe.

You are not to decide the case on prejudice or on sympathy. If the plaintiff has been injured through the negligence of the [166] company, he is entitled to be compensated therefor; if he has not been injured through the negligence of the company you should not allow him anything simply because you

feel sympathy for him. You should have no prejudice against the defendant because it is a corporation,—your verdict should not be influenced by sympathy because you may think that the plaintiff has suffered. It is a matter for you entirely to decide on the evidence as to whether or not the defendant is guilty of negligence and whether that negligence has caused an injury, and if so, how much of an injury.

If you decide in favor of the defendant there will be one form of verdict, “We, the jury, find in favor of the defendant.” If you find in favor of the plaintiff you will assess the amount of his recovery. If you find for the plaintiff you should allow him compensation for the natural and probable consequences of the negligence, if you find negligence, and of course you must find negligence if you find for the plaintiff, because the action is founded on negligence. These damages would include such as are natural and probable consequences of the injury received,—such sum as in your judgment would compensate him for the pain and suffering that he has endured, if any, and you must take into consideration, if you reach that point in your deliberations, you may take into consideration the question as to whether the injury is permanent or temporary, his age, how much longer he would naturally have to live, and arrive as best you can at the pecuniary equivalent for the damage that he has suffered, if you find that he has suffered any.

In speaking of inspection, I think I instructed you it was a question for you to decide whether or not

the inspection as testified to by the defendant—his going up there and looking at it—was sufficient. I did not mean by that to charge you that that was the only inspection that the defendant claimed to have made. You will consider what it did say as to what inspection it made,—whether it made other inspection besides simply looking at it, [167] or whether it confined its inspection, if it made any, to simply looking at it,—it is a question for you to determine if it inspected it by looking at it or by putting his weight on it, or in any other manner,—it is for you to say whether any inspection that Mr. Patching did make was such as an ordinarily reasonable and prudent man would make under the circumstances, if the circumstances were such as to call for any inspection at all,—that is all a matter for you to determine, whether inspection was called for by an ordinarily prudent man, and whether an ordinarily prudent man would have made any more inspection than the defendant made, if it made any inspection—those are all matters for you to consider in determining what an ordinarily prudent and careful person would have done under the circumstances.

Whereupon the defendant excepted to the instructions of the Court as follows:

Mr. FAULKNER.—If the Court please, I think the Court should instruct the jury that in order for the plaintiff to recover they must find that if any accident happened through the negligence of the defendant it happened in the manner described by the plaintiff.

The COURT.—I think I have instructed them to that effect.

Mr. FAULKNER.—That is, there would be no room for conjecture or speculation as to whether he might have fallen in some other manner or some other place or was injured in some other way,—that is the sole testimony.

The COURT.—I thought I had instructed as to that but I will make it plainer: that they must find that the negligence was the negligence alleged in the complaint.

Mr. FAULKNER.—And that he fell the distance testified to and in the manner testified to.

The COURT.—Oh, no, I do not think he would have to show that. He would have to show that the injury arose from the negligence alleged but the fall might not have been exactly as he said. [168]

Mr. FAULKNER.—I mean there couldn't be any variation in the distance. There is only one line of testimony of the distance that he fell and they must find that to be a fact.

The COURT.—That is all a question of whether he received the injury.

Mr. FAULKNER.—The defendant excepts to the Court's refusal to give the second paragraph of instruction No. 2 requested by the defendant, where it defines a ladder not like a piece of complicated machinery.

The COURT.—I think I have given all that except that one clause. I don't think I could give it just as you have it there.

Mr. FAULKNER.—We further except to the

Court's failure to give instructions 3 and 4 requested by defendant.

The COURT.—I cannot give No. 4 on account of the fact that it is not pleaded.

Mr. FAULKNER.—Yes, I think it is. I think we have plead that—that if any negligence existed it was—

The COURT.—Contributory negligence is not pleaded You plead that if there was an accident it was due solely to the negligence of the plaintiff. That is another way of saying that defendant was not negligent.

Mr. FAULKNER.—Does it have to be plead?

The COURT.—It does not have to be alleged but the denial pleads it. I have stated to the jury that unless they find negligence of defendant the plaintiff cannot recover.

Whereupon the jury retired for deliberation, and thereafter, to wit, on the 5th day of December, 1920, returned into court the following verdict, to wit:

“In the District Court for the District of Alaska,  
Division No. 1, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION,

Defendant.

### VERDICT.

We, the jury duly empanelled and sworn in the



above-entitled cause, find for the plaintiff and assess the amount of his recovery at \$Ten Thousand (\$10,000).

E. F. UNDERHILL,  
Foreman." [169]

And thereafter, to wit, December 6th, 1920, the defendant filed a motion for judgment for defendant, as follows:

"In the District Court for the District of Alaska,  
Division No. 1, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpor-  
ation,

Defendant.

**Motion for Judgment for Defendant.**

Comes now the defendant, by its attorney, and moves the Court to enter judgment herein for the defendant, and set aside the verdict of the jury, for the reason that the verdict is contrary to the law and the evidence, and that there is no evidence to sustain a verdict in favor of the plaintiff.

H. L. FAULKNER,  
Attorney for Defendant."

Which motion for judgment for defendant was denied by the Court, to which ruling the defendant then and there excepted.

That thereafter, within the time allowed by law, to wit, on the 6th day of December, 1920, the defendant filed a motion for a new trial as follows, to wit:

“In the District Court for the District of Alaska,  
Division No. 1, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corporation,

Defendant.

**Motion for New Trial.**

Now comes the defendant, by its attorney, and moves the Court to set aside the verdict of the jury herein and grant it a new trial of this cause, upon the following grounds, to wit: [170]

**I.**

The Court erred in overruling and refusing to grant the defendant's motion for a nonsuit.

**II.**

The Court erred in refusing to direct a verdict in favor of the defendant.

**III.**

The Court erred in instructing the jury regarding the measure of damages; and in failing to submit to the jury proper standard by which to compute the damage.

## IV.

The Court erred in refusing to instruct the jury that in order for them to find for the plaintiff, they must believe that the accident, if any, occurred in the exact manner testified to by the plaintiff.

## V.

The verdict of the jury is contrary to the law and the evidence and was returned in palpable disregard of the evidence and instructions of the Court; and must have been based upon sympathy or prejudice.

## VI.

The verdict of the jury is excessive and not based upon the law or the evidence.

## VII.

The court erred in refusing to give the second paragraph of instruction No. 2 requested by defendant, and in refusing to give instructions 3 and 4, requested by defendant.

H. L. FAULKNER,

Attorney for Defendant."

That thereafter, on the 14th day of May, 1921, the Court denied the defendant's motion for a new trial, as follows:

"I have gone over the record in this case and I do not find any substantial reason for granting a new trial thereof. [171] While the evidence was not any too strong, yet I am clearly of the opinion that it was sufficient to go to the jury. That being the case, and the jury having found for the plaintiff, I feel that their verdict ought not to be disturbed.

Accordingly, the motion for a new trial is denied."

To which ruling the defendant excepted, and the exception was allowed. [172]

United States of America,  
Territory of Alaska,—ss.

THIS IS TO CERTIFY that on the 3d day of June, 1921, the foregoing bill of exceptions was duly presented to me, the Judge of the above-entitled court before whom the above-entitled cause was tried, same being within the time allowed by me within which to present a bill of exceptions, and now, on motion of defendant, I do hereby settle and allow said bill of exceptions and order that the same be made a part of the record herein; and I further certify that said bill of exceptions contains all the evidence and exhibits adduced by both parties at the trial, and is in all respects a full, true and proper record of the proceedings herein.

Done in open court, at Ketchikan, Alaska, this 3d day of June, 1921.

ROBERT W. JENNINGS,  
Judge.

O. K.—A. H. ZIEGLER,  
Atty. for Pltff.

Filed in the District Court, District of Alaska,  
First Division. June 3, 1921. J. W. Bell, Clerk.  
By L. A. Green, Deputy [173]

In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 411—KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpora-  
tion,

Defendant.

**Judgment.**

This cause came regularly on for trial on the 1st day of December, 1920, the plaintiff appearing in person and by his attorneys, Messrs. Ziegler & Gore, and the defendant appearing in person and by its attorney, H. L. Faulkner, Esq. A jury consisting of twelve qualified citizens of the United States of America and residents of the Territory of Alaska, was duly empaneled and sworn to try said action. Witnesses on behalf of plaintiff and defendant were sworn and examined and thereafter, having heard the evidence, the arguments of counsel and the instructions of the Court, the jury retired to consider their verdict and subsequently returned into court and filed with the clerk their verdict, which was for the plaintiff and against the defendant and in the words and figures as follows, to wit:



In the District Court for the District of Alaska,  
Division Number One, at Ketchikan.

No. 411—KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpora-  
tion,

Defendant.

**Verdict.**

We, the jury duly empaneled and sworn in the above-entitled cause, find for the plaintiff and assess the amount of his recovery at \$10,000.00.

E. F. UNDERHILL,

Foreman.

Thereafter, and within the time allowed by law, the defendant made and filed its motion for a new trial, which said motion was, after argument by counsel and due consideration by the Court, denied, to which ruling of the Court the defendant excepted.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the [174] plaintiff, D. J. Gover, do have and recover of and from the defendant, Alaska Packers' Association, a corporation, the sum of Ten Thousand Dollars (\$10,000.00), with interest thereon at the rate of 8% per annum from the date hereof until paid, together with his costs and disbursements herein expended taxed by the clerk.

Dated at Ketchikan, Alaska, this 17th day of May, 1921.

ROBERT W. JENNINGS,  
Judge.

To the signing of the foregoing the defendant is allowed an exception and is allowed 40 days from this 14th day of May, 1921, to prepare and file a bill of exceptions herein, and during said 40 days' execution on the above judgment is hereby stayed, upon the filing of a bond by defendant in the sum of \$11,000.00.

ROBERT W. JENNINGS,  
Judge.

O. K. as to form.

H. L. FAULKNER,  
Atty. for Deft.  
By A. G. SHOUP.

Filed in the District Court, District of Alaska, First Division. May 17, 1921. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy.

Entered Court Journal No. D, page 35. [175]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411—KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Bond for Stay of Execution.**

KNOW ALL MEN BY THESE PRESENTS: That we, the Alaska Packers' Association, a corporation, doing business in Alaska, as principal, and J. R. Heckman, as surety, are held and firmly bound unto the above-named D. J. Gover in the sum of Twelve Thousand Dollars (\$12,000.00), to be paid to the said D. J. Gover, for which payment, well and truly to be made, we bind ourselves and each of us and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17th day of May, 1921.

The condition of the above obligation is such that whereas a judgment was entered on the 17th day of May, 1921, in the above-entitled court and cause in favor of the plaintiff, D. J. Gover, and against the defendant, Alaska Packers' Association, a corporation, in the sum of Ten Thousand (\$10,000.00) Dollars; and, whereas the said defendant desires to sue out a writ of error to the United States Circuit Court of Appeals for the 9th Circuit to reverse said judgment, and whereas an order has been issued to stay execution on said judgment for a period of forty days:

NOW, THEREFORE, if the above-bounden Alaska Packers' Association, a corporation, shall prosecute said writ of error to effect, and answer all costs and damages which might accrue to the said plaintiff, D. J. Gover, by virtue of said stay of [176] of execution, then this obligation shall

be void; otherwise the said shall be in full force and effect.

ALASKA PACKERS' ASSOCIATION.

By H. L. FAULKNER,  
Its Attorney and Agent,  
Principal.  
J. R. HECKMAN,  
Surety.

O. K. as to form.

A. H. ZIEGLER,  
Atty. for Pltff.

United States of America,  
Territory of Alaska,—ss.

I, J. R. Heckman, being first duly sworn, depose and say: That I am a resident of the Territory of Alaska, Division Number One; that I am not an attorney nor counselor at law, marshal, deputy marshal, clerk of any court, or other officer of any court; and that I am worth the sum of Twelve Thousand Dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

J. R. HECKMAN.

Subscribed and sworn to before me this 17th day of May, 1921.

[Notary Seal]

ARTHUR G. SHOUP,  
Notary Public for Alaska.

My commission expires May 16, 1925.

Approved May 17th, 1921, and stay granted.

ROBERT W. JENNINGS,

Judge.

O. K. as to form.

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Attorney for Plaintiff.

Filed in the District Court, District of Alaska,  
First Division. May 17, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [177]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpora-  
tion,

Defendant.

**Petition for Writ of Error.**

Alaska Packers' Association, a corporation, the defendant herein, conceiving itself aggrieved by the final judgment of the Court entered herein on May 17th, 1921, and having filed its assignments of error herein, prays the Court to allow it a writ of error from the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, and to fix the amount of security which it shall give as a supersedeas to said judgment on such writ of error.

H. L. FAULKNER,  
Attorney for Defendant.



Writ of error allowed. Supersedeas bond fixed at \$12,000.00.

Dated this 3d day of June, 1921.

ROBERT W. JENNINGS,  
Judge.

Service admitted June 3, 1921.

A. H. ZIEGLER,  
Attorney for Plaintiff.

Filed in the District Court, District of Alaska,  
First Division. Jun. 3, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [178]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

### **Assignment of Errors.**

Now comes the defendant and assigns the following errors committed by the trial Court during the progress of the trial of this cause, and in the rendition of the final judgment, and upon which the defendant will rely in the Appellate Court for a reversal.

## I.

The Court erred in overruling and refusing to grant the defendant's motion for a nonsuit.

## II.

The Court erred in refusing to direct a verdict for the defendant at the close of all the evidence.

## III.

The Court erred in instructing the jury regarding the measure of damages and in failing to submit to the jury a proper standard by which to compute the damages, if any.

## IV.

The Court erred in overruling defendant's motion to set aside the verdict and grant a new trial herein.

## V.

The Court erred in overruling the motion of the defendant for judgment for the defendant.

And for said errors and others manifest of record, defendant prays that the judgment be reversed herein and the cause remanded.

H. L. FAULKNER,

Attorney for Defendant.

Service admitted June 3, 1921.

A. H. ZIEGLER,

Attorney for Plaintiff.

Filed in the District Court, District of Alaska,  
First Division. Jun. 3, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [179]

In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Writ of Error.**

United States of America,—ss.

The President of the United States to the Judges of  
the District Court of Alaska, Division Number  
One, GREETING:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is be-  
fore you, wherein D. J. Gover is plaintiff, and  
Alaska Packers' Association, a corporation, is de-  
fendant, a manifest error hath happened to the great  
damage of the said Alaska Packers' Association, a  
corporation, as by its petition doth appear.

We being willing that error, if any hath happened,  
shall be duly corrected and speedy justice done to  
the parties in that behalf, do command you, if judg-  
ment be given therein, that then under your seal  
distinctly and openly you send the record and pro-  
ceedings aforesaid with all things pertaining thereto  
to the United States Circuit Court of Appeals for  
the Ninth Circuit in the City of San Francisco,  
State of California, so that you have the same before

our said Court on or before thirty days from the date hereof, that the record and proceedings aforesaid, being [180] inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what *if* right, according to the laws and customs of the United States, should be done.

WITNESS the Honorable \_\_\_\_\_, Chief Justice of the United States, and the seal of the District Court of Alaska, Division Number One, affixed at Ketchikan this 3d day of June, 1921.

[Seal]

J. W. BELL,  
Clerk.

By \_\_\_\_\_,  
Deputy.

Allowed June 3, 1921.

ROBERT W. JENNINGS,  
Judge.

Services admitted June 3, 1921.

A. H. ZIEGLER,  
Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Jun. 3, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [181]

In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Alaska Packers' Association, a corpora-  
tion, as principal, and J. R. Heckman, of Ketchikan,  
Alaska, as surety, are held and firmly bound unto  
the above-named D. J. Gover, plaintiff, in the sum  
of Twelve Thousand Dollars (\$12,000.00), for which  
payment, well and truly to be made, we bind our-  
selves, our heirs, executors, administrators, succes-  
sors and assigns, jointly and severally, firmly by these  
presents.

The condition of the above obligation, however, is  
such that whereas the above-bounden Alaska Packers'  
Association has sued out a writ of error in the  
above-entitled cause from the United States Circuit  
Court of Appeals for the Ninth Circuit to reverse  
the judgment rendered in said cause on the 17th day  
of May, 1921.

Now, if the said Alaska Packers' Association shall  
prosecute its writ of error to effect, and pay all such



damages and costs as may be awarded against it if it fail to make good its plea, then this obligation shall be null and void; otherwise to remain in full force and effect.

Dated at Ketchikan, Alaska, June 3d, 1921.

ALASKA PACKERS' ASSOCIATION, a  
Corporation.

, By H. L. FAULKNER,  
Its Agent and Attorney in Fact,  
Principal.  
J. R. HECKMAN,  
Surety. [182]

United States of America,  
Territory of Alaska,—ss.

I, J. R. Heckman, whose name is subscribed to the foregoing bond as surety thereon, being first duly sworn, depose and say: That I am a resident and property owner of the Territory of Alaska, Division Number One, and not an Attorney nor Counselor at Law, Marshal, Deputy Marshal, Clerk of any Court nor other officer of any Court, and that I am worth the sum of Twenty-four Thousand Dollars (\$24,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution.

J. R. HECKMAN.

Subscribed and sworn to before me this 3d day of June, 1921.

[Notary Seal]

ARTHUR G. SHOUP,  
Notary Public for Alaska.

My commission expires May 16, 1925.

Approved to operate as a supersedeas from the filing thereof.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska,  
First Division. Jun. 3, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [183]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corpo-  
ration,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to D. J. Gover  
and to Messrs. A. H. Ziegler and L. O. Gore,  
His Attorneys, GREETING:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-  
peals for the Ninth Circuit to be holden in the City  
of San Francisco, State of California, within thirty  
days from the date of this writ pursuant to a writ of  
error in the clerk's office of the District Court for  
Alaska, Division Number One, in a cause wherein

Alaska Packers' Association, a corporation, is plaintiff in error, and you defendant in error, and then and there to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

WITNESS the Honorable \_\_\_\_\_, Chief Justice of the United States, this 3d day of June, 1921.

ROBERT W. JENNINGS,

Judge.

Service admitted June 3, 1921.

A. H. ZIEGLER,

Attorney for Defendant in Error.

Filed in the District Court, District of Alaska, First Division. Jun. 3, 1921. J. W. Bell, Clerk.

By V. F. Pugh, Deputy. [184]

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In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

D. J. GOVER,

Plaintiff,

vs.

ALASKA PACKERS' ASSOCIATION, a Corporation,

Defendant.

**Praeipie for Transcript of Record.**

To the Clerk of the District Court, Ketchikan, Alaska.

You will please make up a transcript of the rec-

ord in the above-entitled cause, and include therein the following papers, to wit:

- 1st. Amended complaint.
- 2d. Answer to amended complaint.
- 3d. Reply.
- 4th. Motion for a new trial.
- 5th. Motion for judgment for defendant.
- 6th. Judgment.
- 7th. Bond on stay of execution.
- 8th. Bill of exceptions.
- 9th. Petition for writ of error.
- 10th. Assignment of errors.
- 11th. Order allowing writ.
- 12th. Writ of error.
- 13th. Bond on appeal.
- 14th. Citation.
- 15th. This praecipe.

Said transcript to be made up in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

H. L. FAULKNER,  
Attorney for Defendant.

Filed in the District Court, District of Alaska,  
First Division. Jun. 3, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [185]

In the District Court for the District of Alaska,  
Division No. One, at Ketchikan.

No. 411-KA.

THE ALASKA PACKERS' ASSOCIATION, a  
Corporation,

Plaintiff in Error,

vs.

D. J. GOVER,

Defendant in Error.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
District of Alaska,  
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 185 pages of typewritten matter, numbered from 0 to 185, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record, as per the praecipe, of the plaintiff in error, on file herein and made a part hereof, in the cause wherein The Alaska Packers' Association, a corporation, is plaintiff in error, and D. J. Gover is defendant in error, No. 411-KA, as the same appears of record and on file in my office, and that the said record is by virtue of the writ of error and citation issued in this cause, and the return thereof, in accordance therewith. I further certify that there is enclosed herewith defendants' original Exhibits Nos. 1, 2, 3 and 4.



I do further certify that the transcript was prepared by me, in my office, and the cost of preparation, examination, and certificate, amounting to eighty-three & 25/100 dollars (\$83.25), has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 15th day of June, 1921.

[Seal]

J. W. BELL,  
Clerk. [186]

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[Endorsed]: No. 3705. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Packers' Association, a Corporation, Plaintiff in Error, vs. D. J. Gover, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed June 23, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

